



First Amendment Foundation

Protecting Your Right to Know for 30 Years!

BOARD OF TRUSTEES

DAVE WILSON, CHAIRMAN

Senior Editor/Administration
The Miami Herald

BOB SHAW, VICE CHAIRMAN

Retired Editor

MIKE VASILINDA, SECRETARY & TREASURER

President

Capitol News Service

JON KANEY, GENERAL COUNSEL

Kaney & Olivari

DAN AUTREY

Publisher & President

Tampa Bay Newspapers

DICK BATCHELOR

Founder and President

Dick Batchelor Management Group, Inc.

BRIAN CROWLEY

Principal

Immediacy Public Relations

MIKE DEESON

Senior Reporter

WTSP-TV

FRANK DENTON

Editor

Florida Times-Union

CAROL JEAN LOCICERO

Thomas & LoCicero

SAMUEL MORLEY

General Counsel

Florida Press Association

TIM NICKENS

Editor of Editorials

Tampa Bay Times

ROSEMARY O'HARA

Editorial Page Editor

SunSentinel

PATSY PALMER

D'Alemberte & Palmer, PLLC

PATRICK RICE

Editor

Daytona Beach News-Journal

DEAN RIDINGS

President & CEO

Intersect Media Solutions

APRIL SALTER

President & Chief Operating Officer

Salter Mitchell

CRAIG SANDLER

General Manager

Affiliated News Services

PETE WEITZEL

Director Emeritus

February 4, 2015

The Honorable Pam Bondi
Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050

Re: FDLE Controversy

Dear Attorney General Bondi:

As you know, the First Amendment Foundation is a non-profit foundation dedicated for more than three decades to preserving the public's right to know what its government is doing. At your invitation, I write to express the Foundation's deep concerns about the transparency issues surrounding the firing of former FDLE Commissioner Gerald Bailey and the hiring of his replacement. You have called for an outside investigation and expressed your own concern that this State's Sunshine Laws might have been violated in the handling of the FDLE issues. The Foundation supports the appointment of an independent State Attorney from outside Leon County to investigate this matter, to consider whether criminal charges should be brought and to issue a written report with findings.

You recognize that there is no dispute that Cabinet meetings (outside of the clemency process) are subject to the open meeting requirements of the Florida Constitution and Chapter 286, Florida Statutes. *See* Art. I, §24 (b), Fla. Const. The members of Florida's Cabinet are long-time elected officials who are in their second terms as Cabinet members and have long understood their open meetings obligations. It has been reported that Mr. Bailey indicated that he was forced out by the Governor and told by then General Counsel Pete Antonacci that the lawyer had the "concurrence" of all three Cabinet members. Obtaining board member concurrence through back channels operating out of the sunshine on a matter that would foreseeably come before the Cabinet is the essence of an open meetings violation. *Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla.1974).

Violations of the open meeting laws typically occur for the express purpose of avoiding public scrutiny – the very thing the Florida constitutional amendment and Chapter 286 were adopted to thwart. Often, the only way

secret activities come to light is precisely the way this incident became public: when an official action occurs without any public discourse in an open meeting.

Since Mr. Bailey's departure, the Cabinet officers and Governor Scott have only made things more unclear through conflicting and changing statements. While the officers have stated they were blind-sided by Mr. Bailey's ouster, the Governor, in one of his few media interviews on the issue, seemed to concede that the law was violated. "My staff sat down with the staff of the other Cabinet officers. None of them objected," Governor Scott told WINK-TV in Ft. Myers last Friday.

The circumstances surrounding Mr. Bailey's departure and the hiring of his replacement are matters of grave public import. Only a prosecutor with the authority to subpoena witnesses and documents can adequately investigate this matter. However, that prosecutor must be perceived as entirely objective. A prosecutor outside of Leon County -- one who does not reside and work in the same town as those under investigation -- should be appointed. Otherwise, public confidence in the investigation itself will be compromised. The Foundation asks that you take the lead in ensuring a special prosecutor is appointed to investigate this matter in depth.

Thank you for your attention to this matter and for seeking the Foundation's input. Please contact me if you would like to discuss this matter further.

Very truly yours,



Barbara Petersen
President

cc: The Honorable Governor Rick Scott
The Honorable Willie Meggs