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VICTORIES AND LOSSES IN THE FINAL WEEK OF SESSION

By a slim margin, the Senate voted down **Senate Bill 220**, Jeff Brandes (R-St. Petersburg), which would have withheld information from the public pertaining to university and college president searches. Fourteen lawmakers voted against secrecy and in favor of transparency in the selection of our universities' leaders. As a result, Florida institutions will continue to be led by presidents who are thoroughly vetted and are willing to apply in the Sunshine and be known to the communities they aspire to serve.

We are also grateful to Senator Ray Rodriguez for sponsoring **Senate Bill 400**, which passed on Monday

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and is headed to the Governor's desk. When signed into law, this bill will prevent an agency from filing a declaratory action against a citizen who requests records, which is every citizen's constitutional right. As a result, people who file public records requests will not have to fear being hauled into court by the government and expend time and money defending their right of access to government information.

While there are victories to celebrate, the legislature approved every other exemption bill considered this week. The legislature passed six new exemptions just this week, bringing the total number of exemptions approved to 14. This compares to eight exemption bills passed during the entire legislative session last year. If signed into law, these new exemptions will restrict access to records of private entities contracting with the government, regulated by state agencies, or investigated by law enforcement.

The attack on open records comes in a year with negligible public participation. The capitol is still closed to the public. As FAF executive director Pamela Marsh told the South Florida Sun Sentinel, participation has not been optimal. Spirited protests and emotional debates have been missing from this session. Lawmakers do not have to have face constituents when leaving chambers. While the rest of the state is open for business, the legislature is closed to the public – and chipping away at the public's right to know.

Social Media

Senate Bill 7072, Governmental Oversight and Accountability, regulates social media companies and prohibits companies from removing (deplatforming) candidates for elected office. The bill also limits how websites can censor users and certain "journalistic enterprises." SB 7072 authorizes the Department of Legal Affairs and Attorney General to investigate suspected violations of websites. We believe this bill conflicts with the federal Communications and Decency Act, Section 230, and violates the First Amendment by compelling speech that contravenes these corporations' established Terms of Service. SB 7072 went back and forth between the House and Senate multiple times this week and eventually passed the Senate with 17 no votes, mostly along party lines. The House approved the bill, 77 to 38.

Senate Bill 7074, Governmental Oversight and Accountability committee, makes confidential and exempts information received by the Attorney General, Department of Legal Affairs, and law enforcement agencies pursuant to investigations into social media companies authorized by SB 7072. SB 7074 states that the exemption should be construed in conformity with Fla. Stat. § 119.071(2)(c). Yet, that statute only exempts records; it does not make records confidential. The exemptions are already nonconforming. In addition, because exempt records will

remain confidential and exempt even after an investigation is complete, this bill could mean records that were merely exempt would remain confidential when held by the Department of Legal Affairs, Attorney General, or other investigating agencies. This will result in unnecessary confusion for the public seeking records and custodians responding to public records requests. To our great disappointment, the bill passed, with only 13 senators voting against the exemption bill. Had one more Senator stood up for transparency, this bill would have failed. The bill initially failed in the House, 78 to 40. A motion to reconsider was adopted, and the bill passed the second time 79 to 39. The bill heads to the Governor.

Court Records

Senate Bill 166, Keith Perry (R-Gainesville), exempts and makes confidential a nonjudicial record of the arrest of a minor who has successfully completed a diversion program and has the record sealed or expunged. The bill was unanimously approved by the House and now heads to the Governor's Desk.

House Bill 1229, Jenna Persons-Mulicka (R-Fort Myers), which would be known as "Serena's Law," requires a county recorder or clerk of court to make known on a publicly available website the identity of an adult against whom an injunction for protection of a minor against domestic violence, sexual violence, or stalking is entered and the fact that a protective injunction has been entered against a respondent or defendant. The Senate and House unanimously approved the bill, and it now heads to the Governor.

Trade Secret and Proprietary Business Information

Senate Bill 7022, Regulated Industries, reinstates the exemption for proprietary business information of voice communication service providers submitted to the E911 Board, which oversees state funds to reimburse service providers to cover costs spent to comply with the Emergency Communications Number E911 Act, and other state agencies. The House adopted an amendment deleting trade secret information from the definition of proprietary business information. The House approved the bill as amended with two no votes. SB 7022 returned to the Senate, where it was approved unanimously.

Senate Bill 7028, Regulated Industries, reinstates the exemption for data processing software (obtained by an agency under a licensing agreement that prohibits its

disclosure and is a trade secret) and agency-produced data processing software. The House adopted an amendment repealing the exemption for software obtained by the agency and considered trade secret. Accordingly, the bill only saves the exemption for agency-produced data software. SB 7028 passed; three representatives voted against the bill. The Senate voted in favor of the amended bill; two senators voted no.

House Bill 1055, Tommy Gregory (R-Bradenton), creates an exemption for trade secrets held by an agency. The bill no longer requires the third party submitting records to an agency to claim the information is trade secret. Moreover, the bill does not exclude from the definition of trade secret contract terms and the amount of money paid to third party contractors. HB 1055 will do nothing to keep private entities and agencies form seeking to withhold price terms and bids from public records; the bill will contribute to the misuse of the trade secret exemption. The Senate unanimously approved HB 1055. The House voted in favor of HB 1055, with two representatives voting no.

Agency Records

Senate Bill 7014, Senate Banking and Insurance committee, saves from repeal an exemption for proprietary business information contained in filings to the Office of Insurance Regulation. The House voted in favor of the bill, with only one no vote. We commend Representative Anna Eskamani for standing up for transparency and voting against SB 7014. Next, the Governor will consider the bill.

Senate Bill 68, Lleana Garcia (R-Miami), exempts the home address, photographs, and other information of current and former staff and domestic violence advocates. The House unanimously voted in favor of SB 68, which now heads to the Governor.

Senate Bill 1634, Jason Brodeur (R-Lake Mary), was unanimously approved by the House and heads to the governor. The bill exempts and makes confidential certain information held by the Department related to shellfish processing facilities, audit records, and aquaculture production records.

House Bill 971, exempts and makes confidential all information received by the Department of Legal Affairs pursuant to a violation of House Bill 969, regulating businesses' use of consumer data. This bill makes investigative information confidential, although criminal intelligence information or criminal investigation information pursuant to Fla. Stat. § 119.071(2)(c) is only exempt – not exempt and confidential. In addition, there are already exemptions for much of the information sought to be protected, from social security numbers to investigative information

received by the Department. The Senate approved SB 971, on a vote 31-9 vote. HB 971 was sent back to the House for approval.

Law Enforcement Records

Senate Bill 890, Ed Hooper (R-Palm Harbor), imposes a noncriminal infraction, punishable by a fine not exceeding $2,000, for unauthorized use or release of information in the Driver and Vehicle Information Database. The House unanimously approved SB 890, and it now goes to the Governor.

Senate Bill 1048, Aaron Bean (R-Jacksonville), exempts reinvestigation information generated during a new investigation by a conviction integrity unit within a state attorney's office. The exemption applies for a reasonable period of time during an active, ongoing, and good faith investigation of a claim of actual innocence and until the claim is no longer capable of further investigation. The House unanimously approved SB 1048. It now heads to the Governor.

Public Notice

Senate Bill 402, Ray Rodrigues (R-Fort Myers), allows agencies to publish notices on newspaper websites instead of only publishing notices in print-based newspapers. Notices must also be published on the statewide notice site. This allows third-party verification of notices and prevents governments from hiding notices on less-trafficked government websites. After conforming **House Bill 35** with **Senate Bill 402**, both chambers HB 35. The Senate approved HB 35 unanimously, and nine representatives voted no. It now goes to the Governor.