

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON, FLORIDA

MATTHEW WEIDNER,  
THE ASSOCIATED PRESS,  
CITIZENS FOR SUNSHINE, INC., and  
THE FLORIDA SOCIETY OF  
NEWSPAPER EDITORS, INC.,

Plaintiffs,

v.

CASE NO.:

RICK SCOTT, and THE FLORIDA CABINET, a  
joint collegial body,

Defendants.

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**COMPLAINT SEEKING  
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, MATTHEW WEIDNER, THE ASSOCIATED PRESS, CITIZENS FOR  
SUNSHINE, INC., and THE FLORIDA SOCIETY OF NEWSPAPER EDITORS, INC., sue  
Defendants, RICK SCOTT and THE FLORIDA CABINET, a joint collegial body, and alleges:

**Introduction**

This action seeks a declaration that the Florida Cabinet is subject to the Sunshine Law when cabinet aides seek to act for and exchange information among Cabinet members as to decisions about hiring and firing the head of the Florida Department of Law Enforcement. The Governor violated the Sunshine Law by using conduits to engage in polling, discussions, communications and other exchanges with other members of the Cabinet regarding his unilateral decision to force the resignation of the FDLE Commissioner and appoint a replacement without any notice to the public, without any opportunity for the public to attend, and without any

minutes being taken. Because the Governor appears to justify this conduct by claiming it is part of a longstanding convention and tradition, Plaintiffs also seek injunctive relief.

### **JURISDICTION**

1. This Court has jurisdiction pursuant to Art. I, Sec. 24(b), Fla. Const.; Art. V, Sec. 20(c)(3), Fla. Const.; § 26.012(2)(e) and (3), Fla. Stat.; § 86.011; § 286.011(4), Fla. Stat.; and Rule 1.610, Fla. R. Civ. P.

2. Venue lies in Leon County, Florida, because the acts for which suit is brought have occurred or are occurring in Leon County, Florida, and the Defendants are located within Leon County, Florida.

### **PARTIES**

3. Plaintiff, Matthew Weidner (“Weidner”), is a citizen within the State of Florida within the meaning of § 286.011, Florida Statutes. Weidner has an interest in his government operating in compliance with Florida’s open-government laws under Art. I, § 24, of the Florida Constitution, and Chapter 286, Florida Statutes. The Sunshine Law vindicates a public policy and the interests of Weidner lies in protection of Florida’s open government laws.

4. Plaintiff, The Associated Press (“AP”), is a news cooperative organized under the Not-for-Profit Law of New York and owned by its 1,500 U.S. newspaper members. The AP’s members and subscribers include the nations newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 300 locations in more than 100 countries. On any given day, the AP’s content can reach more than half the world’s population.

5. Plaintiff, Citizens for Sunshine, Inc., (“Citizens”), is a Florida Not-for-Profit Corporation organized and existing under the Laws of Florida. The purpose and mission of Citizens is to promote and enforce compliance with Florida’s open-government laws under Art.

I, § 24, of the Florida Constitution, and chapters 119 and 286, Florida Statutes. Since 2008, Citizens has been involved in numerous legal actions in the trial and appellate courts throughout the State of Florida, both as a party and as amicus curiae. The Sunshine Law vindicates a public policy and Citizens' interests lie in protection of Florida's open government laws.

6. The Florida Society of News Editors ("FSNE"), is a membership organization that seeks to advance the cause of responsible journalism through educating the public about relevant stories and publications around the state.

7. Defendant, RICK SCOTT, is the Governor of the State of Florida, and a voting member of and chair of the Florida Cabinet.

8. The Florida Cabinet ("Cabinet"), is composed of the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture and is a joint collegial body or board within the meaning of Art. I, § 24(b), Fla. Const., and § 286.011, Fla. Stat. In his capacity as Governor of the State of Florida, Defendant SCOTT is a voting member of the Cabinet.

### **FACTS**

9. At all times material, the Defendants knew that Florida's Government-in-the-Sunshine-Law, codified in Art. I, § 24(b), Fla. Const., and § 286.011, Fla. Stat., ("the Sunshine Law"), prevented members of the Cabinet from discussing any matter that was reasonably foreseeable to come before the Cabinet unless: i) advance notice to the public was given; ii) an opportunity was provided for the public to attend; and iii) minutes were taken of the proceedings.

10. The Florida Department of Law Enforcement ("FDLE") is headed by the Governor and the Cabinet. See Art. IV, § 4(g), Florida Constitution, and § 20.201(1), Florida Statutes.

11. The executive director or Commissioner of FDLE is appointed by the Governor with the approval of three members of the Cabinet and subject to confirmation by the Senate. See § 20.201(1), Florida Statutes.

12. The executive director or Commissioner of FDLE serves at the pleasure of the Governor and the Cabinet. See § 20.201(1), Florida Statutes.

13. “To serve at the pleasure” is statutorily defined as the appointee serves in the office “until removed by the appointing authority.” See § 20.03(13), Florida Statutes.

14. Sometime between November 5, 2014, and December 16, 2014, Defendant SCOTT intended to fire Gerald Bailey, then the executive director and Commissioner of FDLE.

15. On December 16, 2014, using an aide, Defendant SCOTT told Commissioner Bailey to resign or be fired before 5 p.m. that same date (“the forced resignation”).

16. Commissioner Bailey was told that members of the Cabinet had agreed to Defendant SCOTT’s intention to fire him and replace him with another individual.

17. Between December 16, 2014 and January 13, 2015, aides to Defendant SCOTT, polled, discussed and exchanged communications with aides to other members of the Cabinet (“the conduits”) relating to the forced resignation and replacement of the FDLE Commissioner.

18. At all times material, the conduits were acting with delegated or apparent authority to communicate on behalf of Defendant Scott and the members of the Cabinet.

19. The polling, discussions and communication exchanges among the conduits included, but was not limited to, statements that Commissioner Bailey decided to resign and expressed the desire of Defendant SCOTT to replace Commissioner Bailey with Rick Swearingen.

20. The conduits, through their polling, discussions and communication exchanges with each other, Defendant SCOTT and members of the Cabinet, discussed whether members of the Cabinet objected to the appointment of Rick Swearingen as the new FDLE Commissioner.

21. The conduits, through their polling, discussions and communication exchanges with each other, Defendant SCOTT and members of the Cabinet, expressed the approval of or non-objection by Cabinet members to Defendant SCOTT's unilateral decision to replace Commissioner Bailey with Rick Swearingen.

22. At the time the conduits engaged in the polling, discussions, and communications with each other, Defendant SCOTT and members of the Cabinet, Defendants knew that the issue of any forced resignation and replacement of the FDLE Commissioner was required to come before the Cabinet for a vote.

23. At the time of the conduct and actions in paragraphs 14 through 22, Defendants knew that the polling, discussions, communications and exchanges between the conduits, Defendant SCOTT, and members of the Cabinet were not noticed in advance to the public.

24. At the time of the conduct and actions in paragraphs 14 through 22, Defendants knew that the polling, discussions and exchanges between the conduits, Defendant SCOTT, and members of the Cabinet did not provide an opportunity for the public to attend.

25. At the time of the conduct and actions in paragraphs 14 through 22, Defendants knew that no minutes of the polling, discussions and exchanges were being taken.

26. At a duly noticed meeting on January 13, 2015, Defendant SCOTT and the Cabinet met and ceremonially appointed Rick Swearingen as Commissioner of FDLE without any debate, inquiry or discussion.

27. Plaintiffs have a right to attend any meeting, discussion or communication exchange between two or more members (or their authorized delegates) of the Cabinet involving any matter that is reasonably foreseeable to come before the Cabinet.

### COUNT I

28. Plaintiffs repeat paragraphs 1 through 27 as if fully set forth herein.

29. This is an action against the Defendants for violations of the Sunshine Law under Art. I, § 24(b), Fla. Const., and § 286.011, Fla. Stat.

30. The forced resignation and replacement of the executive director or Commissioner of FDLE is a matter that legally requires the approval of the Cabinet.

31. The polling, discussions, communications and exchanges conducted prior to the January 13, 2015, meeting of the Cabinet relating to the forced resignation and replacement of the FDLE Commissioner constitute a *de facto* meeting of the Cabinet.

32. The polling, discussions, communications and exchanges conducted prior to the January 13, 2015, meeting of the Cabinet relating to the forced resignation and replacement of the FDLE Commissioner concerned a matter that was reasonably foreseeable to come before the Cabinet for official action.

33. The polling, discussions, communications and exchanges conducted prior to the January 13, 2015, meeting of the Cabinet relating to the forced resignation and replacement of the FDLE Commissioner violated the Sunshine Law because they were not noticed in advance to the public.

34. The polling, discussions, communications and exchanges conducted prior to the January 13, 2015, meeting of the Cabinet relating to the forced resignation and replacement of

the FDLE Commissioner violated the Sunshine Law because the public had no opportunity to attend.

35. The failure to take minutes of the polling, discussions, communications and exchanges conducted prior to the January 13, 2015, meeting of the Cabinet relating to the forced resignation and replacement of the FDLE Commissioner violated the Sunshine Law.

36. Plaintiffs have retained the undersigned to represent them in this action.

37. Plaintiffs are entitled to recover attorneys' fees and costs in connection with this proceeding.

WHEREFORE, Plaintiffs request the following relief:

A. A declaration that all unnoticed discussions and exchanges, including the polling, conducted prior to the January 13, 2015, meeting of the Cabinet relating to the forced resignation and replacement of the FDLE Commissioner violated the Sunshine Law;

B. A declaration that the failure to provide the public with the opportunity to attend the unnoticed discussions and exchanges conducted prior to the January 13, 2015, meeting of the Cabinet relating to the forced resignation and replacement of the FDLE Commissioner violated the Sunshine Law;

C. A declaration that the failure to take minutes of the unnoticed discussions and exchanges, including polling, conducted prior to the January 13, 2015, meeting of the Cabinet relating to the forced resignation and replacement of the FDLE Commissioner violated the Sunshine Law;

D. Reasonable costs and attorneys' fees imposed against the defendants pursuant to § 286.011(4), Fla. Stat.; and

E. Such other relief as may be just and proper.

## COUNT II

38. Plaintiffs repeat paragraphs 1 through 27 as if fully set forth herein.

39. This is an action against the Defendants for injunctive relief under § 286.011, Fla. Stat.

40. Defendant SCOTT has made statements to the media suggesting that the practice of Cabinet aides engaging in polling, discussions and communications about appointments required to be made by the Cabinet and relaying the results of those exchanges back to Cabinet members prior to a Cabinet meeting is part of a longstanding convention, practice, policy or custom (“the longstanding practice”).

41. Plaintiffs would suffer irreparable injury if Defendants continue the longstanding practice of violating the Sunshine Law by allowing Cabinet aides to engage in polling, discussions and communications about appointments required to be made by the Cabinet and relaying the results of those exchanges back to Cabinet members prior to a Cabinet meeting.

42. Plaintiffs have no adequate remedy other than an injunction to prohibit the longstanding practice of violating the Sunshine Law by allowing Cabinet aides to engage in polling, discussions and communications about appointments required to be made by the Cabinet and relaying the results of those exchanges back to Cabinet members prior to a Cabinet meeting.

43. An injunction serves the public interest as the Sunshine Law promotes a public policy of the highest order and is a constitutional right enjoyed by all citizens in the State of Florida.

44. Plaintiffs have a substantial likelihood of success on the merits of whether allowing Cabinet aides to engage in polling, discussions and communications about

appointments required to be made by the Cabinet violates the Sunshine Law and relaying the results of those exchanges back to Cabinet members prior to a Cabinet meeting.

WHEREFORE, Plaintiffs request the following relief:

A. A permanent injunction enjoining Defendants, their aides, agents, attorneys and representatives, from engaging in polling, discussions and communications about appointments required to be made by the Cabinet and relaying the results of those exchanges back to Cabinet members prior to a Cabinet meeting;

B. Reasonable costs and attorneys' fees imposed against the defendants pursuant to § 286.011(4), Fla. Stat.; and

C. Such other relief as may be just and proper.

Respectfully submitted,

/s/ Andrea Flynn Mogensen

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