

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA
CIVIL DIVISION**

KNIGHT NEWS, INC.,
a Florida corporation,
Plaintiff,

v.

Case No: _____

THE UNIVERSITY OF CENTRAL
FLORIDA BOARD OF TRUSTEES,
an agency of the State of Florida,
Defendant. /

**EMERGENCY COMPLAINT FOR TEMPORARY INJUNCTION,
PERMANENT INJUNCTION AND DECLARATORY RELIEF**

Plaintiff KNIGHT NEWS, INC. (“**Knight News**”) hereby sues Defendant THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES (“**UCF**”) and moves on an emergency basis for entry of a temporary injunction. In support thereof, Knight News alleges:

INTRODUCTION AND BASIS FOR EMERGENCY RELIEF

1. UCF has closed to the public the upcoming Wednesday, March 16, and Thursday, March 17, 2016, hearings of the UCF Student Government Association’s (“**SGA**”) Election Commission (“**Commission**”). At those hearings, the Commission will adjudicate whether a candidate for both the President of the UCF Student Body and the UCF Board of Trustees is guilty of electioneering

violations and determine whether he should face a punishment, which could include exclusion from the ballot.

2. SGA meetings, including those of the Election Commission, must be and historically have been open to the public. There is no exception to the Sunshine Law that would justify UCF's sudden and unprecedented closure of the Commission's decision-making hearings.

3. The Commission's hearings begin Wednesday. There is no time to wait 20-plus days for UCF to respond to this complaint. The SGA general election is scheduled for March 28-30, 2016—in approximately two weeks. The public has an indisputable interest in continuing to observe the Commission's proceedings so as to hold its current and prospective government officials accountable. No legal or equitable remedy ordered after the Commission's hearing will serve to rectify the wrongs that will be caused by the unprecedented upcoming closed-door session.

4. This action therefore merits the Court's immediate consideration. Knight News seeks a temporary injunction requiring the Commission to conduct its Wednesday and Thursday hearings in the sunshine as well as permanent injunctive and declaratory relief making clear that all SGA meetings, including those of the Commission, must be open to the public.

JURISDICTION

5. This Court has jurisdiction because this is an action for declaratory relief, temporary and permanent injunctive relief, costs and reasonable attorneys' fees arising from UCF's violation of Section 286.011, Florida Statutes ("**Sunshine Law**"). *See* Art. V § 5, Fla. Const.; §§ 86.011, 286.011(2), Fla. Stat.

VENUE

6. Venue in this Court is proper because UCF is located in and conducts its business in Orange County, Florida, and because the causes of action alleged herein accrued in that county. *See* § 47.011, Fla. Stat.

PARTIES

7. Plaintiff Knight News is a non-profit 501(c)(3) Florida corporation with its principal place of business in Orange County, Florida. Knight News is the publisher of an independent, award-winning, student-run, online newspaper serving the UCF community. *See generally* <http://www.knightnews.com>.

8. Defendant UCF Board of Trustees is an agency of the State of Florida, is a "part of the executive branch of state government" and is charged with administering UCF in accordance with Florida law and the regulations promulgated by the state's Board of Governors. §§ 1001.71(1, 3), 1001.706(2), Fla. Stat. UCF's Board of Trustees is subject to the Sunshine Law as well as Article I,

section 24 of the Florida Constitution and can sue or be sued in its own name. §§ 1001.72(1-2), Fla. Stat. UCF has ultimate authority and control over the outside-of-the-Sunshine hearing at issue in this action.

UCF'S STUDENT GOVERNMENT ASSOCIATION

9. SGA is subject to the ultimate authority and control of UCF's administration. §§ 1001.71, 1004.26, Fla. Stat.; UCF Reg. 5.0021(1)(a). However, SGA is self-governing and empowered to discipline its members in accordance with whatever rules it chooses to create. *See* § 1004.26(2), Fla Stat. (2012) ("Each student government shall be organized and maintained by students . . ."); Fla. BOG Reg. 6.014(2) (same); § 1004.26(3), Fla. Stat. (2012) (requiring each student government to adopt its own "internal procedures"); Fla. BOG Reg. 6.014(4) (same); § 1004.26(4)(a), Fla. Stat. (2012) ("The . . . suspension, removal and discipline of officers of the student government shall be determined by student government as prescribed by its internal procedures."); Fla. BOG Reg. 6.014(6) (same); UCF Reg. 1.017 (student government is "self-governing").

10. SGA public officials have been delegated "some part of the sovereign power of the state" and "exercise distinctly governmental functions." *See State v. Jones*, 84 So. 84, 85-86 (Fla. 1920). Student governments in Florida control multi-million dollar public budgets and are vested with "large, and within the scope of

the purpose of their creation almost unlimited, powers of a distinctly governmental character.” *See id.* “They are given authority to provide and determine their own method of procedure and rules of order[.]” *See id.* And a student government can “remove [its officers] from office or employment or reinstate them in office or employment at its sole will and pleasure.” *See id.*

11. SGA is funded by an Activity & Service Fee paid by all UCF students as part of their tuition. §§ 1009.24(9-10), Fla. Stat. These funds are maintained in accounts kept by the UCF Finance and Accounting Office, and all contracts, purchases, appointments and payments to personnel must be in accordance with UCF procedures. UCF Reg. 5.0021(1)(e). The 2015-2016 SGA budget totaled \$18.6 million of public funds.

12. SGA has three branches: a legislature, a judiciary and an executive. Fla. Stat. § 1004.26(2); Art. II-IV, UCF Student Body Const.; Tit. III-V, UCF Student Body Stat.

13. The SGA Student Senate is a representative body elected by the UCF students. *See Fla. Stat. § 1004.26(2).* The Senate, among other things, each year decides what programs will be funded by the A&S Fee funds. Art. II sec. 5, UCF Student Body Const.

14. The SGA Judicial Council is appointed by the SGA president with

advice and consent from the SGA Senate. Art. II sec. 5(E), Art. III sec. 3(B) UCF Student Body Const. The Judicial Council is empowered to “protect[] student rights,” “examine legislative and executive acts,” and hear cases involving the Student Body Statutes and UCF Student Body Constitution. Art. IV sec. 3, UCF Student Body Const.

15. UCF students also elect a president and vice president. “All executive powers and those powers not specifically granted [by the UCF Student Bod Constitution are] vested in the Student Body President . . .” Art. III sec. 1, UCF Student Body Const. The SGA president also is a member of the UCF Board of Trustees. § 1001.71(1), Fla. Stat.

16. There is no exemption to the Sunshine Law for SGA meetings; such as those of its Election Commission. They must be held publically, and until now, they always have been.

17. According to the attached affidavits of Sean Lavin, Nicklas Bajeme and Derek Lowe, which are hereby incorporated as if fully set forth herein as **Exhibits “1,” “2,” and 3,”** respectively, SGA’s tradition of openness goes back at least 13 years and has been enforced by UCF, which even has threatened criminal penalties for violations of the Sunshine Law.

18. UCF’s Web site provides that:

No exemptions to the Constitutional and statutory requirements for open meetings exist for university student government committees, boards, commissions, etc. Consequently, meetings of the student government's executive or legislative body must be open and properly noticed to the public. Additionally, certain committees of student government may be subject to the Sunshine Law, depending on their function.

UCF Office of the General Counsel, Legal Issues, Sunshine Law Open Meetings Requirement, *available at* <https://generalcounsel.ucf.edu/legal-issues/> (last accessed March 11, 2016).

19. SGA also has self-imposed the Sunshine Law for its meetings. § 1201.1, UCF Student Body Stat. (“Student Government meetings are public meetings that must be held in compliance with the provisions of the Sunshine Law and Florida Statutes.”).

SGA’S ELECTION COMMISSION

20. SGA established the Election Commission in Chapter 601 of the UCF Student Body Statutes. It is comprised of ten students appointed by the SGA president with the advice and consent of the SGA Senate. § 601.1, UCF Student Body Stat. The Supervisor of Elections and Assistant Supervisor of Elections also sit on and direct the Commission. *Id.*

21. The Commission’s duties include, among other things, conducting hearings to adjudicate alleged violations of SGA’s election laws. *See* § 605.13,

UCF Student Body Stat. Affidavits detailing alleged campaigning violations can be submitted by “[a]ny student, faculty, or staff member at the University of Central Florida.” § 605.3, UCF Student Body Stat.

22. Thereafter a procedure is employed that can result in the setting of an Election Commission hearing to adjudicate the alleged violation. A violating candidate can be sanctioned by the Commission. *See generally* Ch. 605. UCF Student Body Stat. As set forth above and in Exhibits A, B and C, Election Commission meetings, like all SGA meetings, must be and always have been open to the public.

THE MARCH 16-17, 2016 ELECTION COMMISSION HEARINGS

23. The next SGA general election is scheduled for March 28-30, 2016, and campaigning has begun.

24. One candidate for SGA president, UCF Student Senator Jacob Milich, was accused on March 3, 2016 by fellow student Kaitlyn Kirkpatrick of committing electioneering violations. Kirkpatrick’s affidavit was disclosed unredacted to Knight News by UCF. Lowe Affidavit ¶ 7, Ex. A.

25. Upon information and belief, a total of six affidavits detailing alleged violations were filed against Sen. Milich, who has raised his own, independent concerns to this Court about the Commission acting outside the Sunshine. His

verified motion for injunctive relief in Ninth Circuit Case No. 2016-CA-002203-O is attached hereto as **Exhibit “4”** and incorporated as if fully set forth herein.

26. The Election Commission set the alleged violations for hearing on March 16 and 17, 2016. According to a March 10, 2016 e-mail from Katie Marshall, UCF’s Coordinator and SGA Election Advisor in the University’s Office of Student Involvement, to Sen. Milich, the Commission’s hearings “will be closed to the public.” *See* Lowe Affidavit, ¶¶ 8-9, Ex. B.

27. Both Knight News and the undersigned counsel have reached out to UCF to inquire about the closure of the Commission hearings and the legal basis for the closure. As of this writing, UCF has neither responded to either inquiry nor provided any statutory exemption to the Sunshine Law that would justify closing the Commission’s hearings.

GENERAL ALLEGATIONS

28. Section 286.011(1), Florida Statutes, provides:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution . . . at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

29. UCF may claim that a federal student privacy law incorporated by

reference into Florida's public records exemptions requires closure of the Commission hearings, but the Legislature has made plain that exemptions from the Public Records Act do not constitute exemptions from the Sunshine Law. "An exemption from [the Public Records Act] does not imply an exemption from [the Sunshine Law]. The exemption from [the Sunshine Law] must be expressly provided." § 119.07(7), Fla. Stat.

30. Knight News has a clear legal and constitutional right to access to public meetings where decisions are made, such as those of SGA and its Election Commission. *Id.*

31. UCF has a mandatory and non-discretionary duty to permit public access to public meetings, such as SGA's and its Election Commission, and bears the burden of proving an exemption.

32. Section 286.011(4), Florida Statutes provides:

Whenever an action has been filed against any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision to enforce the provisions of this section or to invalidate the actions of any such board, commission, agency, or authority, which action was taken in violation of this section, and the court determines that the defendant or defendants to such action acted in violation of this section, the court shall assess a reasonable attorney's fee against such agency. . .

Accordingly, should Knight News prevail in this action, it is entitled to an award of

costs and reasonable attorneys' fees.

33. Knight News has incurred costs in pursuing this action, retained the undersigned counsel to represent its, and is obligated to pay a reasonable fee for the undersigned's legal services.

34. Knight News has no adequate remedy at law.

35. All conditions precedent to this action have been met, sustained, or waived by UCF's actions as alleged herein.

COUNT I – EMERGENCY TEMPORARY INJUNCTION
[Open March 16-17, 2016 Election Commission Hearings to the Public]

36. This is an action by Knight News against UCF for an emergency temporary injunction.

37. The allegations contained within paragraphs 1 through 35, *supra*, are hereby incorporated by as if fully set forth herein.

38. This cause of action is alleged in additionally and alternatively to the other causes of action alleged herein.

39. Knight News and the public have a clear legal right to attend SGA meetings, including those of its Election Commission. The existence of this clear legal right is free from reasonable doubt.

40. UCF intends to close to the public the March 16 and 17, 2016 hearings of the SGA Election Commission.

41. Knight News will suffer irreparable harm if a temporary injunction is not issued directing UCF to open the Election Commission's March 16 and 17, 2016 hearings to the public.

42. The threatened injury to Knight News—being denied access to traditionally public hearings at which a candidate for public office could be removed from the ballot or otherwise sanctioned—outweighs any threatened harm that the requested injunction may cause UCF, particularly in light the fact that the Commission's hearings always have been open to the public.

43. Injunctive relief is proper upon an appropriate showing for a violation of the Sunshine Law which, in and of itself, constitutes irreparable injury to Knight News and the public.

44. The injunction sought by Knight News will not disserve the public interest. It will serve the public interest by giving effect to the mandates of the Florida Constitution and state legislature that public business be conducted publically.

45. Knight News has a substantial likelihood of success on the merits.

46. As set forth in the Certificate of Service below, Knight News has given notice of this action to UCF, its attorneys and the state Department of Financial Services.

COUNT II – DECLARATORY RELIEF
[SGA Meetings, Including the Election Commission’s, Must Be Public]

47. This is an action by Knight News against UCF for a declaratory judgment. *See* §§ 86.011, 286.011, Fla. Stat.

48. The allegations contained within paragraphs 1 through 35 and 39 through 46, *supra*, are hereby incorporated by as if fully set forth herein.

49. This cause of action is alleged in additionally and alternatively to the other causes of action alleged herein.

50. UCF is violating the Sunshine Law by closing the Election Commission’s hearings to the public. Any board or commission that acts outside the sunshine risks having their actions declared null and void *ab initio*. § 286.011(1), Fla. Stat.

51. There is a bona fide, actual and present need for a judicial declaration of Knight News’s and the public’s right to attend SGA meetings, including those of its Election Commission.

52. The declaration sought deals with a present, ascertained set of facts and a present controversy concerning that set of facts.

53. The rights of Knight News are dependent upon the aforementioned set of facts and the law applicable to those facts.

54. Knight News and UCF have an actual, present, adverse and

antagonistic interest in the subject matter of this action.

55. The relief sought herein is not merely the giving of legal advice by the court or the satisfaction of mere curiosity.

COUNT III – PERMANENT MANDATORY INJUNCTION
[*Open to the Public SGA Meetings, Including the Election Commission's*]

56. This is an action by Knight News against UCF for a permanent mandatory injunction.

57. The allegations contained within paragraphs 1 through 35, 39 through 46 and 50 through 55, *supra*, are hereby incorporated as if fully set forth herein.

58. This cause of action is alleged in additionally and alternatively to the other causes of action alleged herein.

59. Knight News and the public have a clear legal right to attend SGA meetings, including those of its Election Commission. The existence of this clear legal right is free from reasonable doubt.

60. UCF intends to close to the public the March 16 and 17, 2016 hearings of the SGA Election Commission.

61. Knight News will suffer irreparable harm if a permanent mandatory injunction is not issued directing UCF to open SGA meetings and those of its Election Commission to the public.

62. The threatened injury to Knight News—being denied access to

traditionally public hearings at which candidates for public office could be removed from the ballot or otherwise sanctioned—outweighs any threatened harm that the requested injunction may cause UCF, particularly in light the fact that the Commission’s hearings always have been open to the public.

63. Injunctive relief is proper upon an appropriate showing for a violation of the Sunshine Law which, in and of itself, constitutes irreparable injury to Knight News and the public.

64. The injunction sought by Knight News will not disserve the public interest. It will serve the public interest by giving effect to the mandates of the Florida Constitution and state legislature that public business be conducted publically.

65. Knight News has a substantial likelihood of success on the merits.

WHEREFORE, Plaintiff KNIGHT NEWS, INC., respectfully requests that this Court:

- A. Consider this action on an emergency basis;
- B. Enter a temporary injunction requiring UCF to open to the public the March 16 and 17, 2016 hearings of the SGA Election Commission;
- C. Make a declaration that SGA meetings, including those of its Election Commission, are subject to the Sunshine Law and must be open to the public;

D. Enter a permanent mandatory injunction requiring UCF to open to the public all SGA meetings, including those of its Election Commission;

E. Award to Knight News its costs and reasonable attorneys' fees; and

F. Order any other relief deemed by the Court to be just and proper.

Dated: March 14, 2016

Respectfully submitted,

J.S. HEMLEPP, P.A.

/s/Justin S. Hemlepp

Justin S. Hemlepp, Esq.

Fla. Bar No.: 0058991

12157 West Linebaugh Ave. #388

Tampa, FL 33626

Telephone: (813) 438-6103

E-mail: jhemlepp@hemlepplaw.com

Attorney for Knight News, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing was filed using the Florida Courts' e-filing portal and sent via e-mail to those listed below. The undersigned also is arranging for personal or substitute service as necessary.

W. Scott Cole, Esq.

General Counsel

Youndy C. Cook, Esq.

Deputy General Counsel

UNIVERSITY OF CENTRAL FLORIDA
4365 Andromeda Loop N. Ste. 360
Orlando, Florida 32816-0015

E-mail: scott.cole@ucf.edu

E-mail: youndy.cook@ucf.edu

Ray Williams

*Bureau Chief of Liability and Property
Claims*

DIVISION OF RISK MANAGEMENT,
FLA. DEPT. OF FINANCIAL SERVICES
200 East Gaines Street
Tallahassee, FL 32399

E-mail:

ray.williams@myfloridacfo.com

Cc: **Chris Taul**

E-mail: chris.taul@myfloridacfo.com

Charles T. Wells, Esq.

Richard E. Mitchell, Esq.

GRAYROBINSON, P.A.

301 East Pine Street, Suite 1400

Orlando, FL 32801

E-mail: charles.wells@gray-robinson.com

E-mail: rick.mitchell@gray-robinson.com

E-mail: debi.robbins@gray-robinson.com

Attorneys for the UCF Board of Trustees

Jeffrey T. Kuntz, Esq.

GRAYROBINSON, P.A.

401 East Las Olas Blvd., Suite 1000

Fort Lauderdale, FL 33301

E-mail: jkuntz@gray-robinson.com

E-mail: daurand@gray-robinson.com

Attorney for the UCF Board of Trustees

Dated: March 14, 2016

/s/ Justin S. Hemlepp

Justin S. Hemlepp, Esq.

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, SEAN LAVIN, do hereby state under oath and under penalty of perjury that the following facts are true:

1. I am over the age of 18 and am a resident of the State of Florida. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.

2. I am an investigative producer for an Orlando television network affiliate and, as of February 11, 2016, a member of the Knight News, Inc., Board of Directors, a volunteer position. When I was a UCF student, I previously was a News Editor and reporter for the Central Florida Future, a student newspaper serving UCF that competes with Knight News. Also when I was a UCF student, I was an elected SGA senator and also elected speaker of the Student Senate.

3. In my 13 years of experience as a UCF student, a public official in SGA and as both a student and professional journalist tasked with covering UCF, I have attended, conservatively, at least approximately 80 meetings of various SGA bodies. All of these meetings have been open to the public.

4. In many of these SGA meetings, the participants sat behind name placards, and all of them were preceded by public notices identifying the

participants; the identities of these student-public officials were no secret. The press and videographers were often present to record the proceedings and, when I was an SGA official, I often faxed the press allegations of SGA misconduct, naming the accused official, with no redactions at all.

5. I was accused of violating the SGA Election Statutes on repeated occasions and was subject to noticed, public hearings before the SGA commission required by SGA statutes to determine whether the violation was committed. During these commission hearings, documentary evidence was presented for and against me, people testified for and against me, and the commission made its rulings, and all of this was conducted in public.

6. To my knowledge, no formal UCF SGA meeting—and, specifically, no meeting of its Election Commission—ever has been closed to the public. In fact, when I was an SGA senator, the UCF professional staff advisers were absolutely emphatic that SGA was required to follow Florida's Sunshine Law, and, to ensure compliance, I remember UCF professional advisers prohibiting SGA committees from meeting when the chair forgot to post public notice of the meeting within 24 hours.

7. The unequivocal mandate that SGA comply with the Sunshine Law came from the highest levels of University administration. A review of my records confirms the UCF General Counsel included instructions on its website as far back

as 2005 warning that there was no exception to the applicability of the Sunshine Law for SGA and that "Student legislators should be advised that the university will seek prosecution of and will enforce university sanctions against any person who violates the Florida Sunshine Law."

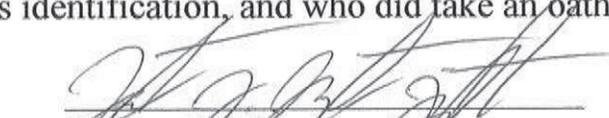
8. I believe the public interest is best served by continuing to permit public access to traditionally open government meetings, such as those of UCF's student government and its Election Commission.

FURTHER AFFIANT SAYETH NAUGHT

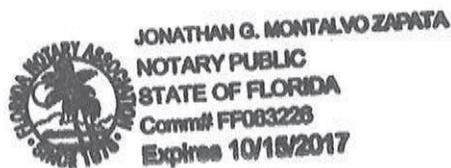
I, SEAN LAVIN, do hereby swear or affirm under penalty of perjury that I have read the foregoing Affidavit and know the contents thereof, and the contents are true of my own knowledge and belief.


Sean Lavin

The foregoing instrument was acknowledged before me this 14 day of March, 2016, by SEAN LAVIN, who is has produced DL FL L150-796-84-2880 as identification, and who did take an oath.


Notary Public
Jonathan G. Montalvo Zapata
(Print Name)

My Commission Expires:



AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, NICKLAS REMINGTON BAJEMA, do hereby state under oath and under penalty of perjury that the following facts are true:

1. I am over the age of 18 and am a resident of the State of Florida. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.

2. I am a student at the University of Central Florida (“UCF”) and served as the Student Government Association (“SGA) Supervisor of Elections on or about Spring 2014 through the end of September, 2015, when I resigned. Prior to serving as Supervisor of Elections, I served as a member of the UCF SGA Elections Commission in 2013 and 2014.

3. During my time as Supervisor of Elections, I presided over at least four election violation hearings which were open to the public, and in which the press was free to attend and had the ability to record the entire meeting. I specifically remember a reporter from the Central Florida Future, Nada Hassanein, being present to report on at least one of the hearings.

4. Part of my duties as Supervisor of Elections included complying with the Sunshine Laws by posting public notice of the meetings and ensuring minutes.

UCF adviser Shane Juntunen made sure I complied with the Florida state laws, specifically, the Sunshine Law requiring advance posting of a public meeting, in an open forum.

5. In my 3 years of experience as a UCF SGA Supervision of Elections/Member of the Elections Commission, there was at no point any question that the public and press would be barred from attending election violation hearings. On the contrary, it was encouraged for the press and public to attend election violation hearings.

6. All of the SGA meetings I have ever attended – including meetings prior to my service in SGA – have been open to the public.

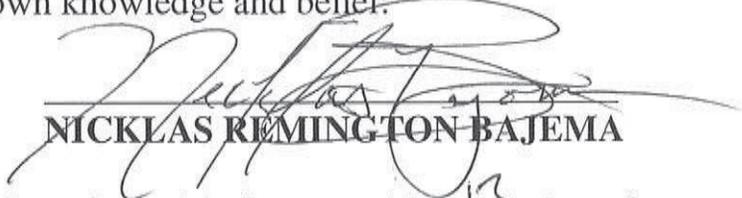
7. In many of these SGA meetings, the participants sat behind name placards, and all of them were preceded by public notices identifying the participants; the identities of these student-public officials were no secret. The press and videographers often present to record the proceedings.

8. To my knowledge, no UCF SGA meeting—and, specifically, no meeting of its Election Commission—ever has been closed to the public.

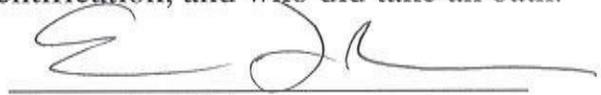
9. I believe the public interest is best served by continuing to permit public access to traditionally open government meetings, such as those of UCF's student government and its Election Commission.

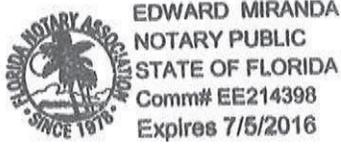
FURTHER AFFIANT SAYETH NAUGHT

I, NICKLAS REMINGTON BAJEMA, do hereby swear or affirm under penalty of perjury that I have read the foregoing Affidavit and know the contents thereof, and the contents are true of my own knowledge and belief.


NICKLAS REMINGTON BAJEMA

The foregoing instrument was acknowledged before me this 13 day of March, 2016, by, NICKLAS REMINGTON BAJEMA who is has produced FLDL-13250636940610 as identification, and who did take an oath.


Notary Public
Edward Miranda
(Print Name)



My Commission Expires: 7/5/2016

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF ORANGE)

I, DEREK LOWE, do hereby state under oath and under penalty of perjury that the following facts are true:

1. I am over the age of 18 and am a resident of the State of Florida. I have personal knowledge of the facts herein, and, if called as a witness, could testify competently thereto.

2. I am a University of Central Florida student leader serving as the Digital News Director of Knight News, Inc., an editor position at the non-profit, digital student newspaper.

3. Knight News is currently covering the 2016 UCF Student Government Association Presidential race, the winner of which sits on the UCF Board of Trustees. One SGA presidential candidate, SGA Senator Jacob Milich, was accused of violating SGA election statutes and a hearing was scheduled before the UCF SGA Election Commission.

4. At 11:57 a.m. March 4, 2016, on behalf of Knight News, I requested from UCF SGA Supervisor of Elections Whitney Barnes a copy of the most recent election violation she received in her role as a public officer of SGA. Barnes responded at 12:11 p.m. and copied three professional staff members employed by

UCF SGA, including David Oglethorpe, who would assist the Election Commission in fulfilling the request “at his earliest convenience.”

5. I responded, on behalf of Knight News, explaining I directed my request to her because David Oglethorpe was not in the office that day. I had reasonably assumed Barnes was at UCF and working that as she promptly responded to my email. Barnes did not respond to Knight News further regarding this request.

6. As the afternoon progressed and I did not receive a return email, Knight News sent one of its reporters, Jacob Hood, to UCF SGA to endeavor to obtain a copy of the requested record prior to the upcoming weeklong student spring break. Shortly after 3 p.m., Hood eventually was able to find Shane Juntunen, one of the professional advisers copied on Barnes’s 12:11 p.m. email, who UCF has designated as a records custodian. Hood made a follow up, oral public records request on behalf of Knight News.

7. After reviewing the record for redactions, Juntunen gave Knight News, through its reporter, Hood, a paper copy of the requested record. At 3:27 p.m., Juntunen emailed Knight News confirming he provided Hood a hard copy of the requested on behalf of Knight News and he considered Knight News’s request fulfilled. True and correct copies of relevant communication discussed above and the unredacted election violation affidavit Juntunen disclosed to Knight News is

attached as Exhibit A.

8. An Election Commission meeting was scheduled to address alleged election violations for March 16, 2016. These meetings have been historically open to the public, however, Knight News had learned UCF had decided the March 16 meeting would be closed.

9. On behalf of Knight News, I requested from UCF, in a series of emails between 10:21 a.m. and 10:53 a.m. March 11, 2016 any email either David Oglethorpe or Katie Marshall, the professional UCF SGA Election Commission adviser, sent or received the day before regarding the closure of election violation hearings. UCF produced a record confirming the hearing would be closed, however, UCF quickly followed up, stating the record should not have been released under UCF's interpretation of FERPA. True and correct copies of the request, response and relevant communication are attached as Exhibit B.

10. Prior to receiving record described above, at 9:07 a.m. March 11, I on behalf of Knight News, emailed many UCF officials, including university vice presidents and Deputy General Counsel Youndy Cook, informing the university that the closure of the hearing is unprecedented and controversial. I asked UCF to please let me know by 10 a.m. if the hearings would be open and I did not hear back to date. A true and correct copy of this email communication is attached as Exhibit C.

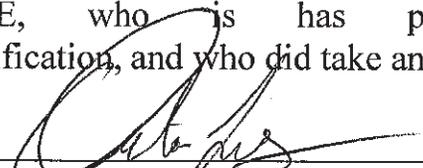
FURTHER AFFIANT SAYETH NAUGHT

I, DEREK LOWE, do hereby swear or affirm under penalty of perjury that I have read the foregoing Affidavit and know the contents thereof, and the contents are true of my own knowledge and belief.



Derek Lowe

The foregoing instrument was acknowledged before me this ____ day of March, 2016, by DEREK LOWE, who is has produced FL L000 17895 311-0 as identification, and who did take an oath.



Notary Public

ANTONIA NUNEZ
(Print Name)

My Commission Expires: 6/27/2019



ANTONIA NUNEZ
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF241943
Expires 6/27/2019

EXHIBIT A

From: KnightNews.com <news@knightnews.com>
Date: Fri, Mar 4, 2016 at 11:57 AM
Subject: Public Records Request - Election Violation Affidavitsd
To: SGA ELECTION COMMISSION <sga_ec@ucf.edu>

Dear Supervisor of Elections Whitney Barnes,

I am emailing you because I understand you are a person having custody of public records which Knight News seeks. Accordingly, I am making a public records request for you to please produce the public records I'm requesting from you.

I'm requesting the most recent election violation affidavit you received in your role as Supervisor of Elections for the 2016 SGA presidential race, the winner of which will become a member of the UCF Board of Trustees.

I'm making this narrow request for one violation affidavit in hopes that you will please forward me a copy of the record by the close of business today, as Spring Break happens next week, and we'd like the newsworthy records as quickly as possible.

Thank you.

Derek Lowe
Digital News Director
KnightNews.com

From: **SGA ELECTION COMMISSION** <sga_ec@ucf.edu>
Date: Fri, Mar 4, 2016 at 12:11 PM
Subject: RE: Public Records Request - Election Violation Affidavitsd
To: "KnightNews.com" <news@knightnews.com>
Cc: Katie Marshall <Katie.Marshall@ucf.edu>, Shane Juntunen <Shane.Juntunen@ucf.edu>, David Oglethorpe <David.Oglethorpe@ucf.edu>

Hello Derek,

I have forwarded your email to David Oglethorpe he assist us in fulfilling these public records request. He will contact you at his earliest convenience.

Go Knights and Charge On!

Whitney Barnes

Supervisor of Elections
Student Government Association
University of Central Florida
Phone: (941) 807-5014
Fax: (407) 823-5593
Email: sga_ec@ucf.edu
ucfsga.com/elections

Under Florida law, email addresses are public records. If you do not want your email address to be released in response to a public records request, do not send electronic mail to this entity. Instead contact this entity by phone or in writing.

From: KnightNews.com <news@knightnews.com>
Date: Fri, Mar 4, 2016 at 12:15 PM
Subject: Public Records Request - Election Violation Affidavitsd
To: SGA ELECTION COMMISSION <sga_ec@ucf.edu>
Cc: "KnightNews.com" <news@knightnews.com>, Katie Marshall <Katie.Marshall@ucf.edu>, Shane Juntunen <Shane.Juntunen@ucf.edu>, David Oglethorpe <David.Oglethorpe@ucf.edu>

Whitney,

I understand David is not here today and that's why I directed the request to you, as you have custody of the record and are here today.

Please let me know if you'll reconsider your decision to delay production of the simple records request Knight News made to you until David returns next week.

Derek Lowe
Knight News

From: **Shane Juntunen** <Shane.Juntunen@ucf.edu>
Date: Fri, Mar 4, 2016 at 3:27 PM
Subject: RE: Public Records Request - Election Violation Affidavitsd
To: "KnightNews.com" <news@knightnews.com>, SGA ELECTION COMMISSION <sga_ec@ucf.edu>
Cc: Katie Marshall <Katie.Marshall@ucf.edu>, David Oglethorpe <David.Oglethorpe@ucf.edu>

Derek,

I want to let you know Jake Hood, came in on your behalf to pick up the record. I was able to provide a hard copy of the record to him. Please consider this fulfillment of your request. If you need it sent to you directly please let us know.

Shane

From: KnightNews.com <news@knightnews.com>
Date: Fri, Mar 4, 2016 at 3:30 PM
Subject: Public Records Request - Election Violation Affidavitsd
To: Shane Juntunen <Shane.Juntunen@ucf.edu>
Cc: "KnightNews.com" <news@knightnews.com>, SGA ELECTION COMMISSION <sga_ec@ucf.edu>, Katie Marshall <Katie.Marshall@ucf.edu>, David Oglethorpe <David.Oglethorpe@ucf.edu>

Shane,

Thank you for fulfilling Knight News's request.

If you don't mind, please also send me an electronic copy of you don't mind. It's helpful for us to use in coverage if we also have it electronically.

Derek
KnightNews.com

3 MAR '16

My name is Kaitlyn Kirkpatrick, and I am currently a student at the University of Central Florida. I declare that, to the best of my knowledge, and belief, the information below is correct and complete:

1. On February 9, 2016, the presidential campaign of Jacob Milich and Elaine Sarlo attended the OFSL all president's meeting and spoke about their campaign, outlined platform points, and explicitly asked for support.
2. In doing so, they explicitly announced that they were running, outlined their platform, and explicitly asked attending members and students for their support in the upcoming election.
3. Election Statutes, Title VI, Section 603.3, Item F establishes:
 "Active Campaigning shall begin immediately following the tickets' Declaration of Candidacy."
 The period in which "Declaration of Candidacy" occurs is specified by Election Statutes, Title VI, Section 603.3, Item B:
 "Declaration of Candidacy for Spring elections shall be during the eighth (8th) week of the Spring semester, and shall take place between 9:00 a.m. and 5:00 p.m. Monday through Thursday."
 "Active campaigning" is defined by Election Statutes, Title VI, Chapter 600, to include, but not to be limited to:
 "Any display or distribution of tangible items or electronic media for a candidate/ticket for an elective office of the student body."
 It is important to note here that the definition of "Active Campaigning" is not limited to the provided definition, as the Election Statutes explicitly states that "The following are defined, but not limited to..." The logical consequence, therefore, is that a common definition and understanding of "active campaigning" must be utilized. In that sense, it can be reasonably understood to mean the active verbal dissemination of information related to or regarding a student government campaign.
4. Accordingly, I hereby assert that the presidential campaign of Jacob Milich and Elaine Sarlo has, through their explicit campaign presence at the aforementioned University of Central Florida College Democrats meeting in a period prior to the start of "Active Campaigning," committed the following election violation:
 - a. The active campaigning that occurred during the scheduled meeting of the University of Central Florida College Democrats on February 2, 2016, as defined by Election Statutes, Title VI, Section 603.3, Items B and F.

Signature: Kaitlyn Kirkpatrick 3/3/16
[name]

Iliana Castro
3/3/16
Iliana Castro



EXHIBIT B

From: **KnightNews.com** <news@knightnews.com>
Date: Fri, Mar 11, 2016 at 10:21 AM
Subject: Records request - closed hearings
To: David Oglethorpe <David.Oglethorpe@ucf.edu>

Hi David,

This is an urgent, targeted and straightforward public records request for any email you sent or received yesterday which indicates whether election commission meetings will be closed next week.

Thank you.

Derek Lowe
KnightNews.com

From: **David Oglethorpe** <David.Oglethorpe@ucf.edu>
Date: Fri, Mar 11, 2016 at 10:23 AM
Subject: RE: Records request - closed hearings
To: "KnightNews.com" <news@knightnews.com>

Hi Derek,

Upon searching, I do not have any records that meet this criteria.

Thank you,

David

David Oglethorpe
Communication Coordinator

Office of Student Involvement
University of Central Florida
Student Union, Room 208
12715 Pegasus Dr. | Orlando, FL | 32816

(407) 823-0548 | (407) 823-5899 (fax)
<http://osi.ucf.edu>

From: **KnightNews.com** <news@knightnews.com>
Date: Fri, Mar 11, 2016 at 10:29 AM
Subject: Records request - closed hearings
To: David Oglethorpe <David.Oglethorpe@ucf.edu>
Cc: Katie Marshall <Katie.Marshall@ucf.edu>

Thanks. Can you, or Katie, please provide any responsive emails from Katie Marshall?

From: **David Oglethorpe** <David.Oglethorpe@ucf.edu>
Date: Fri, Mar 11, 2016 at 10:58 AM
Subject: RE: Records request - closed hearings
To: "KnightNews.com" <news@knightnews.com>
Cc: Katie Marshall <Katie.Marshall@ucf.edu>, Shane Juntunen <Shane.Juntunen@ucf.edu>

Hi Derek,

Katie is out of the office so she forwarded me her email. She has one record.

Thank you,

David

David Oglethorpe

Communication Coordinator

Office of Student Involvement

University of Central Florida
Student Union, Room 208
12715 Pegasus Dr. | Orlando, FL | 32816
(407) 823-0548 | (407) 823-5899 (fax)
<http://osi.ucf.edu>

David Oglethorpe

From: Katie Marshall
Sent: Friday, March 11, 2016 10:57 AM
To: David Oglethorpe
Subject: Fwd: Violation of FERPA

Begin forwarded message:

From: Katie Marshall <Katie.Marshall@ucf.edu>
Date: March 10, 2016 at 1:34:53 PM EST
To: Jacob Milich <jakeandelaine2016@gmail.com>, gcounsel <gcounsel@ucf.edu>, Youndy Cook <Youndy.Cook@ucf.edu>, Shane Juntunen <Shane.Juntunen@ucf.edu>, SGA ELECTION COMMISSION <sga_ec@ucf.edu>, SGA Assistant Supervisor of Elections <sga_aec@ucf.edu>
Cc: Attorney Alex Felce <alejandro@felcelaw.com>
Subject: RE: Violation of FERPA

Mr. Milich,

As I told you earlier this week, we were looking at the election violation hearing procedures in light of your stated concerns regarding privacy of your records. The meetings will be closed to the public, so that should resolve those concerns. The SGA Statutes (Title VI- Chapter 605) outline the specifics of the proceeding, including order of events and your rights in the procedure. If you wish a judicial advisor be assigned to you, please notify the Supervisor of Elections at sga_ec@ucf.edu no later than Monday, March 14th at 5pm.

Katie Marshall
Coordinator/ SGA Election Commission Advisor
Office of Student Involvement

From: Katie Marshall
Sent: Monday, March 07, 2016 11:45 AM
To: 'Jacob Milich' <jakeandelaine2016@gmail.com>; gcounsel <gcounsel@ucf.edu>; Youndy Cook <Youndy.Cook@ucf.edu>; Shane Juntunen <Shane.Juntunen@ucf.edu>; SGA ELECTION COMMISSION <sga_ec@ucf.edu>; SGA Assistant Supervisor of Elections <sga_aec@ucf.edu>
Cc: Attorney Alex Felce <alejandro@felcelaw.com>
Subject: RE: Violation of FERPA

Mr. Milich,

We received your email regarding the scheduled hearings on alleged election violations under SGA statutes (SGA statutes Title VI). The timeframe for those hearing are clearly outlined in SGA statutes, to which you agreed upon declaration of your candidacy. As a result, the hearings will proceed as scheduled.

We understand your concerns with regard to the privacy of student records in the proceedings. We are looking at the procedures to ensure protections for those records in the meeting to the extent feasible. As you know, records exemptions and open meetings are two different issues. We will provide you more information very shortly.

Katie Marshall
Coordinator/ SGA Election Commission Advisor
Office of Student Involvement

From: Jacob Milich [<mailto:jakeandelaine2016@gmail.com>]
Sent: Sunday, March 06, 2016 3:01 PM
To: gcounsel <gcounsel@ucf.edu>; Youndy Cook <Youndy.Cook@ucf.edu>; Shane Juntunen <Shane.Juntunen@ucf.edu>; Katie Marshall <Katie.Marshall@ucf.edu>; SGA ELECTION COMMISSION <sga_ec@ucf.edu>; SGA Assistant Supervisor of Elections <sga_aec@ucf.edu>
Cc: Attorney Alex Felce <alejandro@felcelaw.com>
Subject: Violation of FERPA

To all whom this matter concerns,

After speaking to my attorney, I have determined that my rights under FERPA have been violated and are about to be further violated. As such, I am seeking assurances that the election violation hearings scheduled to be held on March 16th and 17th will be postponed until after the Student Body Presidential Elections, given the pending finality of the 5th District Court of Appeal's opinion which as of now makes SGA disciplinary records subject to FERPA. SGA does not currently have the procedures in place to hold these meetings and comply with FERPA, nor can it close its hearings because doing so would violate Florida Sunshine Laws.

I understand that my SGA disciplinary records have already been released without compliance with FERPA. I have not waived my rights under FERPA and do not wish for my personally identifiable information or information from my education records to be orally or physically disclosed at the disciplinary hearings. Should these hearings remain scheduled, it is my intent to seek an injection from the circuit court which will prohibit these disciplinary hearings from taking place in violation of my FERPA rights. Time is of the essence for this matter. As such, please indicate whether these hearings will be postponed by no later than 3:00pm on Monday, March 7th. This is my final attempt to resolve this matter without litigation. Please direct all responses on this matter to my attorney. His contact information is as follows:

Alejandro Felce, Esq.

alejandro@felcelaw.com

(407) 613-2420

Very Respectfully,

Jacob Milich

From: **David Oglethorpe** <David.Oglethorpe@ucf.edu>
Date: Fri, Mar 11, 2016 at 11:05 AM
Subject: RE: Records request - closed hearings
To: "KnightNews.com" <news@knightnews.com>

Derek,

This previous email was inadvertently sent and its attachment is unreleasable as per FERPA restrictions. Please delete the message dated Fri 3/11/2016 10:58 AM.

Thank you,

David

David Oglethorpe

Communication Coordinator

Office of Student Involvement

University of Central Florida
Student Union, Room 208
12715 Pegasus Dr. | Orlando, FL | 32816
(407) 823-0548 | (407) 823-5899 (fax)
<http://osi.ucf.edu>

From: **David Oglethorpe** <David.Oglethorpe@ucf.edu>
Date: Fri, Mar 11, 2016 at 11:45 AM
Subject: RE: Records request - closed hearings
To: "KnightNews.com" <news@knightnews.com>

Derek,

Any records provided with this request would necessarily identify student(s), because your request is linked to a particular individual. So any response on the part of the University would contain information directly relating to a student and maintained by the institution. Education records are confidential and exempt under Florida and Federal law. See Fla. Stat. SS 1002.225 and 1006.52.

Should you have any questions, please let me know.

Thank you,

David

David Oglethorpe

Communications Coordinator

Office of Student Involvement

University of Central Florida

Student Union, Room 208

12715 Pegasus Dr. | Orlando, FL | 32816

(407) 823-0548 | (407) 823-5899 (fax)

<http://osi.ucf.edu>

From: **KnightNews.com** <news@knightnews.com>

Date: Fri, Mar 11, 2016 at 11:50 AM

Subject: Records request - closed hearings

To: David Oglethorpe <David.Oglethorpe@ucf.edu>

Cc: "KnightNews.com" <news@knightnews.com>

David,

We disagree that the records we requested from you are FERPA records, and even if they were, this particular requested record could have been redacted under FERPA as we didn't name the individual in our request. We therefore object to your unlawful decision as records custodian to assert this overbroad and inapplicable exemption.

Derek Lowe

KnightNews.com

From: **David Oglethorpe** <David.Oglethorpe@ucf.edu>
Date: Fri, Mar 11, 2016 at 12:49 PM
Subject: RE: Records request - closed hearings
To: "KnightNews.com" <news@knightnews.com>

Derek,

I disagree. Because we know what is currently in the public record, no redaction could avoid identification, though I did misspeak regarding the content of your email identifying a particular student.

Thank you,

David

David Oglethorpe

Communications Coordinator

Office of Student Involvement

University of Central Florida
Student Union, Room 208
12715 Pegasus Dr. | Orlando, FL | 32816
(407) 823-0548 | (407) 823-5899 (fax)
<http://osi.ucf.edu>

From: **KnightNews.com** <news@knightnews.com>
Date: Fri, Mar 11, 2016 at 3:09 PM
Subject: Public Records Request - SGA Speaker Records
To: David Oglethorpe <David.Oglethorpe@ucf.edu>

David,

Thank you for providing the the statutory exemption. We still object and disagree it is applicable. Sorry to say it again and beat a dead horse, but last time we sued UCF on behalf of the public, UCF's lawyers tried to dismiss the lawsuit because we didn't object each and every time FERPA

was wrongly asserted to conceal how \$20 million in student money was spent and the actions of the officials spending it. To that end, please consider this email an objection to the applicability of FERPA to any record you've ever sent us on behalf of UCF or SGA.

We will let you know soon if we want the rest of the records from the speaker, or if we will cancel the remaining portion of our request.

Please let us know if UCF and/or SGA is considering requiring FERPA waivers like USF SGA does, to avoid arguing over this issue. We are going to be covering this issue very heavily over the next few weeks, and want to make sure UCF and SGA are still refusing to accept that reasonable suggestion, in order to work with us to be more transparent and avoid litigation over the public record law on one side and FERPA on the other.

Derek Lowe
KnightNews.com