IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FIFTH DISTRICT

CASE NO. 5D14-2951
L.T. NO.: 2013-CA-2664-O

KNIGHT NEWS, INC.,
Appellant,

v.

THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES
and JOHN C. HITT,
Appellees.

ON REVIEW FROM THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

BRIEF *AMICI CURIAE* OF THE STUDENT PRESS LAW CENTER, FIRST AMENDMENT FOUNDATION, FLORIDA PRESS ASSOCIATION, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, AND WKMG-TV IN SUPPORT OF APPELLANT

Carol Jean LoCicero (FBN 603030)
clocicero@tlolawfirm.com
Mark R. Caramanica (FBN 110581)
mcaramanica@tlolawfirm.com
THOMAS & LOCICERO PL
601 South Boulevard
Tampa, FL 33606
Tel.: (813) 984-3060
Fax: (813) 984-3070

Attorneys for *Amici Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

Constitutional Provisions

Other Authorities

IDENTITY OF *AMICI CURIAE* AND STATEMENT OF INTEREST

Amici appear in this case as all have a vested an ongoing interest in ensuring the public records of this state are not wrongfully withheld pursuant to, for example, the federal student privacy law central to this case.

Founded in 1974 and based in Washington, D.C., the Student Press Law Center ("SPLC") is a 501(c)(3) non-profit organization that helps journalists get access to records about schools and colleges, and advocates for transparency in educational institutions. SPLC's lawyers are nationally recognized for their expertise on the interaction of state public records laws with federal privacy statutes.

The First Amendment Foundation is a Florida-based 501(c)(3) tax-exempt, non-profit organization created to ensure government openness and transparency. It provides education and training, monitors open records and meetings laws, and assists citizens and journalists in obtaining access to government.

The Florida Press Association is a trade association incorporated in Tallahassee, Florida. It represents daily and weekly newspapers in Florida on a variety of issues, including those affecting the First Amendment rights of its member newspapers and rights of access to records and proceedings.

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the right to a free and unfettered press guaranteed by the First Amendment, and the right of citizens to be informed, through the press, of the actions of their government.

Graham Media Group, Orlando, Inc., d/b/a WKMG-TV Local 6 is the CBS affiliate in Orlando, Florida, and regularly seeks to obtain public records of newsworthy events from UCF.

I. SUMMARY OF ARGUMENT

Public records are the lifeblood of watchdog journalism. In recent years, image-conscious colleges and universities have grown more secretive in resisting the disclosure of unflattering information they believe might negatively affect recruitment and donations. But concern for image is not a justification for disobeying public records laws.

Federal privacy law was never intended as a shield to conceal things such as campus safety hazards or government ethics scandals. Indeed, it is ironic that a statute enacted to protect students against government overreaching, the Family Educational Rights and Privacy Act ("FERPA"), is now regularly mis-cited to instead protect government officials against scrutiny of their conduct. The records of central import in this case – records pertaining to fraternity and sorority

misconduct, the spending of student fee dollars, and the integrity of Student Government elections – do not fit any of the statutory prerequisites to be confidential "education records," nor are they handled in a manner consistent with the way truly confidential education records would be handled. (Indeed, if these *were* genuinely FERPA records, the University would have quite a lot to explain about letting dozens of students handle "confidential education records" in a non-secure manner.) In reality, colleges have regularly granted access to exactly the type of records sought by the journalists here, with no FERPA repercussions.

Some courts have bought into the characterization of FERPA often urged by the universities, as an absolute federal prohibition on granting requests for public records that, if violated, will result in the ruinous withdrawal of federal funding. But if that argument was ever tenable, it can no longer be entertained after the U.S. Supreme Court's 2012 *Sebelius* ruling. In that case, the Court made it clear that a federal Spending Clause enactment, such as FERPA, cannot be interpreted to compel state compliance under threat of a fiscal "gun to the head." Basic principles of constitutional law and federalism require this Court to interpret FERPA the way it was always intended – as a prohibition against a *policy or practice* of willfully leaving records unsecured, not the good-faith grant of a lawful public records

request by journalists seeking access to information in which any individual student's legitimate privacy interest is negligible.

II. ARGUMENT

A. Access to public records from colleges and schools is essential for honest, accountable government.

Timely, complete access to records makes a decisive difference in whether the public learns of the shortcomings of government officials and government programs in time to take action. Public records enabled the *Chicago Tribune* to document the existence of an off-the-books "clout admissions" system run by University of Illinois lobbyists – a scandal that led to the replacement of UI's president and a majority of its trustees.[1] At Sonoma State University, the *Santa Rosa Press-Democrat* used public records to unravel rampant misuse of donations to the university foundation, including personal loans to insiders that the borrowers were unable to fully repay.[2] *The Atlanta Constitution* used public records to document widespread cheating throughout Atlanta public schools to inflate standardized test scores; as a result of the newspaper's reporting, prosecutors

---

[1] Jodi S. Cohen, Stacy St. Clair & Tara Malone, "Clout goes to college," *Chicago Tribune*, May 29, 2009, at A1; Jodi S. Cohen, Stacy St. Clair and Todd Lighty, "Lobbyists, campaign donors got lawmakers' help to enter U. of I.," *Chicago Tribune*, Feb. 25, 2012, at A1.

[2] Nathan Halverson, "Attorney General auditing SSU loans to Carinalli," *The Press Democrat*, July 29, 2009, at A1.

opened an investigation leading to 35 indictments on charges including racketeering, making false statements and theft.[3] These stories – and the reforms they produced – were possible only because schools and colleges were required to adhere to state laws that empower the public to inspect government documents, even when the government prefers that they be kept secret.

The behavior of fraternities is a matter of enormous public interest and concern. Just this month, national news organizations spotlighted the disturbing story of a University of Oklahoma fraternity whose members engaged in a racist chant, leading to removal of the organization from campus.[4] The notion that these records are "none of the public's business" is an image-motivated concoction by UCF. It has no basis in reality.

---

[3] Joy Resmovits, "Atlanta Cheating Scandal Unveiled by Reporters," *The Huffington Post*, July 6, 2011, *available at* http://www.huffingtonpost.com/2011/07/06/atlanta-public-schools-cheating_n_891737.html (last viewed Feb. 14, 2015); Rhonda Cook & Alan Judd, "Beverly Hall, 34 others indicted in Atlanta schools cheating scandal," *The Atlanta Constitution*, Mar. 29, 2013, at A1.

[4] John Bacon, "Two students expelled over racist fraternity video," *USA Today*, Mar. 11, 2015, at 3A. Similarly, Brookdale Community College in New Jersey responded to an outcry over a student's vile remarks made on social media toward the teenage daughter of baseball star Curt Schilling by publicly announcing the student's suspension. *See* Lisa Suhay, "Curt Schilling defends daughter from Twitter bullies with help of followers," *The Christian Science Monitor*, Mar. 2, 2015.

Misconduct by Greek organizations often involves the physical abuse of pledges, sexual assault, and other misbehavior that – if it took place anywhere other than on a college campus – would produce a trail of documents (jail booking logs, police incident reports, court dockets) enabling the public to track the effectiveness of the justice system's response and to detect potential hazards. UCF cannot be heard to argue that, because the college has elected to create a "secret justice system" parallel to the off-campus legal system, acts of potentially felony-level severity are a "private matter."[5]

B. Colleges and schools habitually misuse FERPA to conceal records even where no legitimate student privacy interest exists.

FERPA has become the knee-jerk response whenever a school or college is confronted with a demand for public records that might reflect unfavorably on its reputation. For instance, a student seeking public records from the University of Florida was forced to file suit after the university insisted that recordings of Student Senate meetings – meetings open for the public to attend and record – were confidential FERPA records; although he prevailed, the university's tactics

[5] It is bedrock law that accurately publishing information about a subject's involvement in a crime, even as a victim or as a suspected juvenile offender, is not actionable. *See Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97 (1979) (finding no privacy invasion in publishing name of juvenile crime suspect).

delayed his access by 17 months.[6] Perhaps the most tragic of FERPA abuses involve requests made by grieving parents, who have been forced to sue to obtain videotapes made in public settings of their children's last moments, because schools (when it suits their agendas) insist that even videos of public events such as football games are "confidential education records."[7] Such absurd assertions of FERPA almost invariably are rejected when challenged, as in the *Bracco* case, but only after requesters waste thousands of dollars and years of litigation (and abuses frequently go unchallenged, as deadline-sensitive public records are often valueless if not produced promptly).

The primary congressional author of FERPA, former U.S. senator and federal appellate judge James Buckley of New York, has decried how institutions manipulate FERPA for purposes of image-motivated concealment. When told that colleges were withholding records as benign as a list of football players who flew on a team airplane, Buckley told *The Columbus Dispatch*: "That's not what we

---

[6] *Bracco v. Machen*, No. 1-2009-CA-4444 (Fla. Cir. Ct. Jan. 10, 2011), *available at* http://s3.amazonaws.com/cdn.getsnworks.com/spl/pdf/bracco_order.pdf.

[7] Matthew Spina, "Parents of high school football player who died file claim," *The Buffalo News*, Jan. 28, 2014; Michelle E. Shaw, "Parents of dead Valdosta teen seek release of video," *Atlanta Journal-Constitution*, Oct. 24, 2013.

intended. The law needs to be revamped. Institutions are putting their own meaning into the law."[8]

C. Documents exactly like those sought by the *Knight News* in this case are routinely disclosed as public records.

When the *Baltimore Sun* began investigating the scope of hazing at fraternities across Maryland, colleges reflexively invoked FERPA to withhold responsive documents shedding light on how often, and why, fraternities were disciplined for abusing pledges.[9] The journalists eventually were able to convince the universities otherwise, resulting in a database of hundreds of pages of records documenting forced binge drinking, sleep deprivation, and other hazardous induction rituals.[10]

Bloomberg News – using *exactly* the type of records that UCF would have this Court declare off-limits – exposed rampant abuse of young recruits by Greek

---

[8] Jill Riepenhoff & Todd Jones, "Secrecy 101," *The Columbus Dispatch*, Dec. 17, 2010, at A1.

[9] Caitlin Johnson, "How to investigate a university (the right way)," *The Poynter Institute*, Dec. 9, 2014, *available at* http://www.poynter.org/news/mediawire/306863/how-to-investigate-a-university-the-right-way/.

[10] Carrie Wells, "Hazing at Md. colleges includes humiliation, coercion, hospital trips," *The Baltimore Sun*, Nov. 22, 2014.

organizations, at times leading to serious injury or even death.[11] In one especially impactful installment of their series, reporters obtained disciplinary records from Maryland's Salisbury University disclosing that the Sigma Alpha Epsilon fraternity was suspended after hazing rituals in which pledges were locked in a basement without food, immersed in ice, and forced to drink themselves unconscious.[12]

Reporters with *The Arizona Republic* obtained five years' worth of files of disciplinary cases against Greek organizations in response to a request for public records to Arizona State University and Northern Arizona University.[13] The newspaper posted the disciplinary records online, a move hailed by campus safety advocates who said openness would help the public make better decisions about joining Greek organizations.[14]

It is inconceivable that all of these institutions are misinformed about FERPA and that only UCF has it right. There is no indication that the U.S.

---

[11] The series, "Broken Pledges," was published beginning in December 2013 and is viewable online at http://topics.bloomberg.com/broken-pledges/.

[12] *See* David Glovin & John Hechinger, "Deadliest Frat's Icy 'Torture' of Pledges Evokes Tarantino Films," *Bloomberg News*, Dec. 30, 2013.

[13] *See* Anne Ryman and Richard Ruelas, "Reforming Greek Life: Alcohol-fueled incidents spur concern, change," *The Arizona Republic*, Sept. 8, 2013.

[14] *See* Anne Ryman and Richard Ruelas, "*Republic* puts discipline histories of ASU, NAU fraternities online," *The Arizona Republic*, Sept. 8, 2013, *available at* http://www.azcentral.com/community/tempe/articles/20130906arizona-fraternities-discipline-records.html.

Department of Education has brought enforcement action against any of the institutions that disclosed fraternity disciplinary records.

Court after court has recognized that FERPA is to be applied in a common-sense manner that permits disclosure even of identifiable records where no legitimate expectation of privacy exists. In *Heller v. Safford Unified School District*, No. CV2011-00165 (Ariz. Super. Ct. Aug. 22, 2011),[15] a journalist sought access to a settlement agreement in a lawsuit between a school district and the family of an Arizona teenager who was unlawfully strip-searched at school, as determined in a nationally publicized U.S. Supreme Court ruling. *Safford Unified Sch. Dist. v. Redding*, 557 U.S. 364 (2009). Over the school district's FERPA objection, the court ordered the settlement released, despite the fact that the requesters – and anyone else paying attention to front-page news – knew the student to whom the records referred. The court reached its conclusion by applying a common-sense balancing test that weighed the "minimal" privacy interests of the now-nationally famous student, "against the greater public interest for transparency in the expenditure of public funds by the district." *See Heller* at 2.

---

[15] *Available at* http://s3.amazonaws.com/cdn.getsnworks.com/spl/pdf/redding_order.pdf.

Similarly, in *Phoenix Newspapers Inc. v. Pima Community College*, No. C20111954 (Ariz. Super. Ct. May 17, 2011),[16] a news organization sought access to email retained by a college concerning former student Jared Loughner, incarcerated for the January 2011 Tucson shooting Tucson that killed a federal judge and five others. The court overrode the college's FERPA-based objection and ordered disclosure, notwithstanding the fact that the requester not only knew the identity of the student to whom the emails referred but received the records in unredacted form including the student's name.

Time after time, courts afford requesters access to public records referring to students over the unfounded FERPA objections of institutions bent on using the privacy statute to frustrate public accountability.[17] This Court should follow suit and order UCF to fully disclose the records sought by the *Knight News*.

---

[16] *Available at* http://s3.amazonaws.com/cdn.getsnworks.com/spl/pdf/PimaCollegeFERPA.pdf.

[17] *See, e.g.*, *Kirwan v. The Diamondback*, 721 A.2d 196 (Md. 1998) (holding that journalists could have access to parking tickets issued to University of Maryland student athletes because they are neither "educational" nor confidential, and not the type of records Congress contemplated in enacting FERPA); *Bozeman Daily Chronicle v. Montana State Univ.*, No. DV-11-581A (March 1, 2012) (finding that reports of investigation of student sexual harassment complaints against professor not protected against disclosure by FERPA), *available at* http://www.documentcloud.org/documents/322102-chronicle-vs-msu-order-on-summary-judgement.html; *News & Observer Publ'g Co. v. Baddour*, No. 10CVS1941 (N.C. Super. Ct. Apr. 19, 2011) (holding that records of calls made by University of North Carolina coaches on state-issued cell phones, and the parking

(footnote continued on next page)

D. FERPA was never intended to, and cannot be understood to, override deep-rooted state public access regimes.

Florida has an especially strong tradition of respect for the public's right to know, having enshrined the right of access not only in Florida statutes, but in the state Constitution (Art. 1, § 24).

By its plain language, the FERPA statute declares an educational institution ineligible for all federal education funding if it maintains a "policy and practice" of disclosing students' confidential education records. 20 U.S.C. § 1232g(b)(1). Most courts to be asked the question have decided, as the trial court below did, that FERPA must mean what it says: It penalizes only an institutional breakdown in recordkeeping, not a one-time decision to honor a public records request in compliance with state law. Indeed, the Department of Education itself took the position, when sued over its now-discredited interpretation that police crime reports were "education records," that FERPA does not override or excuse compliance with state freedom of information laws, but merely "makes disclosure financially unattractive(.)" *Student Press Law Ctr. v. Alexander*, 778 F. Supp. 1227, 1232 n.13 (D.D.C. 1991).

---

tickets issued to student athletes, were not confidential under FERPA), *available at* http://s3.amazonaws.com/cdn.getsnworks.com/spl/pdf/uncathletics_ruling.pdf.

While it is possible for a federal statute to supersede state law where there is a direct conflict between the two that makes compliance with both impossible,[18] such is not the case with FERPA. *See Owasso Indep. Sch. Dist. v. Falvo*, 534 U.S. 426, 432 (2002) (in holding that a student assignment did not satisfy the FERPA definition of "education records," the Supreme Court, invoking principles of federalism, stressed it did not want to interpret FERPA to interfere with state and local functions of education). As the Supreme Court has stated: "In the interest of avoiding unintended encroachment on the authority of the States ... a court interpreting a federal statute pertaining to a subject traditionally governed by state law will be reluctant to find preemption. Thus, preemption will not lie unless it is the clear and manifest purpose of Congress." *CSX Transp. v Easterwood*, 507 U.S. 658, 663-64 (1993) (internal quotes omitted). In the collision between FERPA and Florida law, three areas traditionally governed by the states are at issue: education, privacy, and access to state records. Thus, federal authority is at its nadir.

Notably, absolutely nothing either in the FERPA statute or in Department of Education regulations implementing FERPA even mentions the existence of state

[18] *See English v. Gen. Elec.*, 496 U.S. 72, 79 (1990).

public records laws – not once. An intent to override substantive legal rights safeguarded by state law certainly cannot be inferred from silence.

There is no conflict preemption here; it is possible to maintain a *policy and practice* of safeguarding education records (as FERPA requires) while at the same time making disclosures when a requester presents a statutorily valid request under the Florida public records act to which no state exemption applies. It would contravene basic tenets of federalism to interpret FERPA as overriding entrenched principles of state law absent any indication that Congress intended that result or even was aware that FERPA might produce that result.

E. FERPA's structure and function are inconsistent with the University's understanding of the statute as a prohibition on honoring requests for newsworthy public records.

The overriding reason that the University's interpretation should be rejected as unreasonable is that it is structurally incompatible with FERPA. By its terms, FERPA is about the duty to enforce a *pattern and practice* of confidentiality – that is, a duty not to make a habit of disclosing students' education records (for instance, because of inadequate computer security or the laziness of instructors who post grades on the bulletin boards). This is much different from the University's understanding of FERPA as a one-strike-and-you're-dead regime in which a single fulfilled public records request constitutes a violation.

Congress provided only one remedy for a FERPA violation: complete disqualification from federal education funding. *See* 20 U.S.C. § 1232g(b)(1) (providing that "no funds shall be made available" under any federal education program to an institution violating FERPA's prohibitions on disclosure). Revoking UCF's eligibility for federal funding would effectively put the University out of business, since it receives many tens of millions of dollars in federal funding annually.[19] To insist that Congress could have intended to shutter an entire educational institution because of a single good-faith grant of a request for public records is simply irrational.

Realistically, Congress intended FERPA to penalize only the rare outlier institution that wantonly makes a *practice* of handling student records carelessly. Otherwise, Congress would have provided (and the Department would have implemented by rulemaking) milder intermediate penalties for one-off disclosures of records, just as Congress has proven amply capable of doing with comparable education-funding statutes. *See* Department of Education, *Adjustment of Civil Monetary Penalties for Inflation*, 77 Fed. Reg. 60047, 60049 (Oct. 2, 2012).

---

[19] During the 2013 fiscal year, UCF received $87,096,780 in federal grants and contracts, according to the University's annual financial audit, 20 percent of its $435 million operating revenues. *See* State of Florida Auditor General, University of Central Florida Financial Audit, Report No. 2014-127, at 14, *available at* http://www.myflorida.com/audgen/pages/pdf_files/2014-127.pdf.

It is nonsensical, for example, to take the position that the penalty for falsifying a crime report to mislead the public in violation of the federal Clery Act, 20 U.S.C. 1092(f), is an offense carrying a penalty of $35,000, while the penalty for granting a public records request is in excess of $87 million. For the established penalty structure to make any sense, a FERPA violation must necessarily be of the magnitude of a total institutional breakdown in security, not a one-time decision made in good-faith reliance on state disclosure laws.

Moreover, because FERPA operates as both a disclosure statute and a confidentiality regime, *see* 99 C.F.R. Parts 99.10-99.22, categorizing records as confidential for FERPA purposes carries the obligation to afford the student substantive rights that are irreconcilable with the University's notion that documents such as requests for student activity fee funding, write-ups of fraternity discipline, or the other documents at issue in this case can be "education records." In the Supreme Court's *Falvo* case, the U.S. Department of Education filed a brief laying out a narrow view of what qualifies as a FERPA record:

> The designation of a document as an education record under FERPA means not only that it is subject to restrictions against release without parental consent, but also that parents have a right to inspect and review the record, a right to a hearing to challenge the content of the record to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, and a right to insert into such records a written explanation by the parents regarding the content of the records.

Owasso Indep. Sch. Dist. No. I-011 v. Falvo, Brief for the United States as Amicus Curiae, No. 00-1073, 2001 U.S. S. Ct. Briefs LEXIS 964 at *24-25, (June 1, 2001).

This limited understanding of FERPA is irreconcilable with the University's expansive concept of the statute as an all-encompassing secrecy blanket that covers everything even tangentially relating to a student. A college plainly would not keep student organizations' budget requests on file with the registrar's office for inspection and correction by students who show up asking to see their FERPA records. None of the affirmative rights that attach to FERPA records are applied to the records sought by *Knight News* in this case.

Moreover, the statute requires that if anyone makes a request for access to FERPA records, the custodian must place on file *with that document* a record of the request for access:

> (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information.

20 U.S.C. 1232g(4)(A). Since the *Knight News* has requested the disciplinary records of Greek organizations, affidavits relating to student elections and the budget requests of student organizations, categorizing those documents as FERPA

records would require the University to maintain, with each record, a notation that the *Knight News* requested those records along with a statement of the *Knight News*' interest. It is implausible that each of these records contains that statutorily required accompanying document.

F. FERPA cannot constitutionally be interpreted as a "gun to the head" overriding Florida's strong public policy favoring transparency.

While Congress may condition the receipt of federal funds on accepting reasonable conditions under its Spending Clause authority, the financial penalty for noncompliance cannot be "so coercive as to pass the point at which pressure turns into compulsion." *South Dakota v. Dole*, 483 U.S. 203, 211 (1987) (internal quotes and citation omitted). In *NFIB v. Sebelius*, 132 S. Ct. 2566 (2012), the U.S. Supreme Court determined that pressure had become compulsion where states were threatened with ineligibility for hundreds of millions of dollars in federal Medicaid funding if they rejected the Affordable Care Act's mandate to expand Medicaid eligibility.

The Court views Spending Clause enactments with special skepticism where, as here, the condition purportedly being imposed – exempting anything meeting FERPA's description of an "education record" from disclosure regardless of the privacy and disclosure interests at stake and in derogation of state open records law – does not relate to the grant program. *Sebelius* at 2604; *see also*

Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc., 133 S.Ct. 2321 (2013) (striking down as an "unconstitutional condition" a policy conditioning receipt of federal AIDS-education grants on an agreement to adopt "party line" condemning prostitution).

If honoring a request for public records will put a university in violation of FERPA, and the result of being found in violation of FERPA is the "institutional death penalty" of disqualification from participation in federal education funding, then FERPA fails the compulsion standard of *Sebelius*. Indeed, educational institutions have themselves argued for decades, at times successfully, that FERPA operates as *Sebelius*' proverbial "gun to the head," because refusing federal education funding would be such a ruinous choice as to be no choice at all.[20]

Declaring legislative enactments unconstitutional is a disfavored "nuclear option," and courts avoid doing so when a statute can be giving a limiting construction. *See Firestone v. News-Press Pub. Co.*, 538 So. 2d 457, 459 (Fla.

[20] In a brief to the U.S. Court of Appeals for the Seventh Circuit arguing that FERPA prohibited honoring a public records request to the University of Illinois, leading education groups argued that colleges are compelled to accept FERPA's dictates, noting that 19.1 percent of the university's operating revenues comes from federal sources, the loss of which would be crippling if not fatal. *Chicago Trib. Co. v. Univ. of Illinois Bd. of Trustees*, Brief of the Am. Council on Educ. *et al.*, No. 11-2066, at 14 (7th Cir. July 20, 2011), *available at* http://www.acenet.edu/news-room/Documents/Amicus-Brief-Chicago-Tribune-v-The-University-of-Illinois-Board-of-Trustees.pdf.

1989). As the Supreme Court has instructed, "the elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *Edward J. Bartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trade Council*, 485 U.S. 568, 575 (1988) (quotation omitted). FERPA is harmonized with state public records laws by giving it the limited understanding that its drafters intended – as a prohibition on a policy or practice of failing to secure centrally maintained education records containing legitimately confidential information.

CONCLUSION

For the foregoing reasons, *amici* respectfully request this Court reverse the lower court's ruling.

Respectfully submitted,

THOMAS & LOCICERO PL

/s/ Mark R. Caramanica
Carol Jean LoCicero (FBN 603030)
clocicero@tlolawfirm.com
Mark R. Caramanica (FBN 110581)
mcaramanica@tlolawfirm.com
601 South Boulevard
Tampa, FL 33606
Tel.: (813) 984-3060
Fax: (813) 984-3070

Attorneys for *Amici Curiae*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the eDCA filing portal, and sent via electronic mail, this 16th day of March, 2015, to:

Robert Rivas
Sach Sax Caplan, P.L.
660 E. Jefferson Street, Ste. 102
Tallahassee, FL 32301-2547
rrivas@ssclawfirm.com

Attorneys for Appellant

Richard E. Mitchell
GrayRobinson, P.A.
301 E. Pine Street, Suite 1400
Orlando, FL 32801
rick.mitchell@gray-robinson.com

Attorneys for Appellee

Justin S. Hemlepp
J.S. Hemlepp, P.A.
12157 W. Linebaugh Ave., No. 388
Tampa, FL 33626
jhemlepp@hemlepplaw.com

Attorneys for Appellant

/s/ Mark R. Caramanica
Attorney

CERTIFICATE OF COMPLIANCE WITH FLA. R. APP. P. 9.210

Undersigned counsel hereby certifies that this brief *amici curiae* is typed in 14 point (proportionately spaced) Times New Roman and otherwise meets the requirements of Florida Rule of Appellate Procedure 9.210.

/s/ Mark R. Caramanica
Attorney