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VIA EMAIL AND U.S. MAIL
(SGA_PRES@MAIL.UCF.EDU, SGA_SPKR@MAIL.UCF.EDU)

Mike Kilbride
Student Body President
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University of Central Florida
4000 Central Florida Blvd.
Orlando, FL 32816

Drew Pope
Senate President
Student Union, Room 214
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4000 Central Florida Blvd.
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Re: LJR Committee Impeachment Meetings

Dear Messrs. Kilbride and Pope:

This firm represents Kevin Wolkenfeld and KnightNews.com, its editor-in-chief. Mr. Wolkenfeld advises us that he was ejected last week from a meeting of the Student Senate's Legislative, Judicial, and Rules Committee ("LJR Committee"). Since then has been unable to obtain an audio recording of the meeting.

The meetings of the LJR Committee are required to be "open to the public at all times" pursuant to the Government in the Sunshine Law, section 286.011 of Florida Statutes, and Article I, section 24(b) of the Florida Constitution (collectively, the "Sunshine Law"), unless they are closed pursuant to a statutory exemption. The closing of the LJR Committee meetings at issue is illegal under the Sunshine Law.

Demand is hereby made that the Student Government Association immediately discontinue its practice of closing LJR Committee meetings and immediately release the audio recordings of past meetings.

I. The nonexistent "fact-finding exemption"

I have reviewed section 704.5(C) of the Student Body Statutes. This statute is void on its face as contrary to the requirements of the Sunshine Law.

The statute says these meetings "serve solely as fact-finding meetings in which the LJR Committee may gather information needed for the Removal Hearing, and are thus

exempt from Florida Sunshine Law under the limited exemption applicability [sic] of Sunshine Law to advisory committees established for fact-finding only." This statement is legal nonsense. The Sunshine Law does not contain any "limited exemption" for "advisory committees established for fact-finding only."

Mr. Wolkenfeld has provided me with email messages from SGA officers in which the notion of a "limited exemption" for "fact-finding" is supported by reference to *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985). The *Palm Bay* line of cases has nothing to do with a "limited exemption" for a board that is governed by the Sunshine Law. *See also, e.g., Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976). The words "exempt" or "exemption" do not appear in *Palm Bay* or *Bennett*.

Palm Bay, Bennett and the other cases in their line pertained to certain groups of people, none of whom was an elected or appointed member of a Sunshine Law-covered board. *Palm Bay* and *Bennett* were attempting to distinguish between a committee that was governed by the Sunshine Law and one that was not. The committees in those cases consisted of individuals who served in a fact-finding capacity for an administrator. Such an ad hoc committee may be governed by the Sunshine Law if it is "an advisory board appointed to make recommendations to an appointing authority," and are "an integral part of the decision-making process." *Krause v. Reno,* 366 So. 2d 1244, 1251-52 (Fla. 3d DCA 1979). *See also Wood v. Marston*, 442 So. 2d 934 (Fla.1983).

If, on the other hand, the individuals are serving only in a "fact-finding" capacity, they may not constitute a "board" governed by the Sunshine Law. *See, e.g., Palm Bay, Bennett*. *Palm Bay* and *Bennett* discussed whether the committee "was not a body that was subject to the open meetings requirement." *Finch v. Seminole County School Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008). *Palm Bay* and *Bennett* referred to an "exception to the applicability" of the Sunshine Law "to *advisory committees*." *Finch*, 995 So. 2d at 1072 (emphasis in original). They never made any reference to an "exemption" from the Sunshine Law for covered boards or commissions.

Thus, by definition, the *Palm Bay-Bennett* "exception" cannot be applied to members of a board that is covered by the Sunshine Law. The Sunshine Law covers "any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board." *Rhea v. City of Gainesville*, 574 So. 2d 221, 222 (Fla. 1st DCA 1991). It covers any such meeting by "two or more" members of the covered board. *Blackford v. School Board of Orange County*, 375 So. 2d 578, 580 (Fla. 5th DCA 1979). It is thus a legal impossibility for two or more members of the Student Senate to serve as members of a non-covered "fact-finding" group as the "fact-finding" concept is defined in *Palm Bay* and *Bennett*.

Even if it were possible for two or more members of a Sunshine Law-covered board to serve on a "fact-finding" committee that is not covered by the Sunshine Law, as that concept is explained in *Palm Bay* and *Bennett*, the LJR Committee could not, by any credible argument, be such a committee. Under the Student Body Statutes, the LJR Committee is empowered to make a final decision as to whether to bring an impeachment charge to the floor of the Senate, and it is charged with determining what evidence is admissible in a Senate impeachment hearing. These powerful roles make the LJR Committee an integral part of the Senate's decision-making process in an impeachment proceeding. The LJR Committee is not a mere fact finding group.

II. The required 'cure'

The LJR Committee meetings violated the Sunshine Law by being closed to the public. If the LJR Committee's actions have any impact on the Senate's final impeachment decision, my client will be entitled to a judgment declaring the full Senate's final impeachment decision void *ab initio*. *See Zorc v. City of Vero Beach*, 722 So. 2d 891, 902 (Fla. 4th DCA 1998).

A Sunshine Law violation may be "cured" so that the final decision need not necessarily be declared void. *Id.; see also Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 860-61 (Fla. 3d DCA 1994). These cases establish that the "cure" must necessarily take place before the final decision. My clients are willing to accept that the illegality of the LJR Committee meetings has been "cured" if the audio recordings of the meetings are made public immediately.

III. The release of the audio recordings

The SGA's continued refusal to release the audio recordings of LJR Committee meetings is illegal under both the Sunshine Law and the Public Records Act, Chapter 119 of Florida Statutes. Under the Sunshine Law, the Senate's final impeachment decision will be void if the recordings are intentionally and illegally withheld until after the impeachment proceedings are completed. *See Grapski v. City of Alachua*, 31 So. 3d 193, 200 (Fla. 1st DCA 2010) (City Commission's approval of minutes declared void because the minutes were not made public until after open vote to approve them).

Under the Public Records Act, a public record must be produced within a "reasonable time" after it is requested. §119.07(1)(a), Fla. Stat. (2010). My clients recognize that a "reasonable time" might involve some delay if a delay is reasonably necessary to comply with the request. However, the "reasonable time" standard does not give an agency the prerogative to delay producing a public record, not even for one day, if the delay is invoked solely to harass a requestor, or for some other ulterior motive. *See,*

e.g., Tribune Co. v. Cannella, 458 So. 2d 1075, 1079 (Fla. 1984) (holding "that the legislative scheme of the Public Records Act has preempted the law relating to any delay in producing records for inspection. The only delay permitted by the Act is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt."). We will prove the SGA is withholding the public release of the LJR Committee recordings in order to avoid making them public until after the Senate's final impeachment hearing. This delay is patently illegal.

In addition, should my clients have to bring an action to enforce the Public Records Act, we will easily be able to establish — through the direct responses made by email to their requests — that the SGA has routinely invoked the "reasonable time" standard to delay producing public records when there was no justification whatsoever for the delay, and the delay was merely to hinder my clients from covering the news. If SGA chooses to push the issue, we will establish a broad pattern of such illegal delays in producing public records and seek an equally broad declaratory judgment and permanent injunction to prohibit the SGA's illegal delays in producing public records.

IV. Attorneys' fees and costs

In the event of litigation over these demands, my clients will be entitled to recover their attorneys' fees and costs from SGA under Florida Statutes sections 119.12 and 286.011(4). Upon a trial court's finding that the Sunshine Law or Public Records Act has been violated, an award of attorneys' fees and costs to the plaintiff is not discretionary; it is mandatory. *See, e.g., Indian River County Hosp. Dist. v. Indian River Memorial Hosp., Inc.*, 766 So. 2d 233, 235 (Fla. 4th DCA 2000).

V. Conclusion

Please let me know today whether SGA will comply with the requirements of the Sunshine Law and the Public Records Act.

Very truly yours,

SACHS SAX CAPLAN

Robert Rivas

RR:dw
cc: Scott Cole (scole@mail.ucf.edu)