

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR LEON COUNTY

THE ASSOCIATED PRESS;  
CAPE PUBLICATIONS, INC.,  
d/b/a *FLORIDA TODAY*;  
COLLIER COUNTY PUBLISHING LLC,  
d/b/a *Naples Daily News*;  
FIRST AMENDMENT FOUNDATION;  
FLORIDA PRESS ASSOCIATION;  
LAKELAND LEDGER PUBLISHING CORPORATION,  
d/b/a *The Ledger*;  
MEDIA GENERAL OPERATIONS, INC.,  
d/b/a WFLA-TV, tbo.com, and *The Tampa Tribune*;  
MIAMI HERALD MEDIA COMPANY,  
d/b/a *The Miami Herald*;  
MORRIS PUBLISHING GROUP LLC,  
d/b/a *The Florida Times-Union*;  
NEWS-JOURNAL CORPORATION,  
d/b/a *Daytona Beach News-Journal*;  
NYT MANAGEMENT SERVICES, INC.,  
d/b/a, *The Gainesville Sun* and *Sarasota Herald-Tribune*;  
ORLANDO SENTINEL COMMUNICATIONS COMPANY,  
d/b/a *Orlando Sentinel*;  
*Pensacola News Journal*, *The News-Press* and WTLV,  
divisions of MULTIMEDIA HOLDINGS CORPORATION;  
SCRIPPS HOWARD BROADCASTING COMPANY,  
d/b/a WPTV-TV;  
SCRIPPS TREASURE COAST PUBLISHING LLC,  
d/b/a *Stuart News*, *Vero Beach Press Journal*,  
and *Ft. Pierce Tribune*;  
SUN-SENTINEL, INC.,  
d/b/a *South Florida Sun-Sentinel*;  
TAMPA BAY TELEVISION, INC.,  
d/b/a WFTS-TV;  
*Tallahassee Democrat*, a division of  
FEDERATED PUBLICATIONS, INC.;  
WJXX, a division of GANNETT RIVER  
STATES PUBLISHING CORPORATION; and  
WTSP, a division of PACIFIC AND  
SOUTHERN COMPANY, INC.,

Case No. \_\_\_\_\_

**IMMEDIATE HEARING  
REQUESTED PURSUANT TO  
SECTION 119.11(1), Fla. Stat.**

Plaintiffs,

v.

FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES; T.K. WETHERELL, in his official capacity as President of Florida State University; NATIONAL COLLEGIATE ATHLETIC ASSOCIATION; and GRAYROBINSON, P.A.,

Defendants.

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**COMPLAINT TO ENFORCE PUBLIC RECORDS ACT**

Plaintiffs THE ASSOCIATED PRESS; CAPE PUBLICATIONS, INC., d/b/a *FLORIDA TODAY*; COLLIER COUNTY PUBLISHING LLC, d/b/a *Naples Daily News*; FIRST AMENDMENT FOUNDATION; FLORIDA PRESS ASSOCIATION; LAKELAND LEDGER PUBLISHING CORPORATION, d/b/a *The Ledger*; MEDIA GENERAL OPERATIONS, INC., d/b/a WFLA-TV, tbo.com, and *The Tampa Tribune*; MIAMI HERALD MEDIA COMPANY, d/b/a *The Miami Herald*; MORRIS PUBLISHING GROUP LLC, d/b/a *The Florida Times-Union*; NEWS-JOURNAL CORPORATION, d/b/a *Daytona Beach News-Journal*; NYT MANAGEMENT SERVICES, INC., d/b/a *The Gainesville Sun and Sarasota Herald-Tribune*; ORLANDO SENTINEL COMMUNICATIONS COMPANY, d/b/a *Orlando Sentinel*; *Pensacola News Journal*, *The News-Press* and WTLV, divisions of MULTIMEDIA HOLDINGS CORPORATION; SCRIPPS HOWARD BROADCASTING COMPANY, d/b/a WPTV-TV; SCRIPPS TREASURE COAST PUBLISHING LLC, d/b/a *Stuart News*, *Vero Beach Press Journal*, and *Ft. Pierce Tribune*; SUN-SENTINEL, INC., d/b/a *South Florida Sun-Sentinel*; TAMPA BAY TELEVISION, INC., d/b/a WFTS-TV; *Tallahassee Democrat*, a division of FEDERATED PUBLICATIONS, INC.; WJXX, a division of GANNETT RIVER STATES PUBLISHING CORPORATION; and WTSP, a division of PACIFIC AND SOUTHERN

COMPANY, INC., (collectively “Plaintiffs”) file this action against FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES (“FSU”); T.K. WETHERELL, in his official capacity as President of Florida State University (“Wetherell”); NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA “); and GRAYROBINSON, P.A. (“GrayRobinson”) (collectively the “Defendants”) and state:

1. This action concerns a scheme created to avoid public access to records the NCAA sends to FSU. Absent an explicit statutory exemption, any document, *regardless of its physical form or means of transmission*, that is communicated to or received by FSU in the course of its official business is a public record. To avoid Florida’s broad Public Records Act, the NCAA has sent a document to FSU by posting it on a secure website, which brings up the document in a read only format that is not capable of being saved, printed, copied, or accessed by the public in any manner. The law firm GrayRobinson, as FSU’s attorney and agent, has entered into a “web custodial confidentiality agreement” as required by the NCAA. It accessed and reviewed this public record and communicated its contents to FSU officials. By entering into this scheme, the NCAA and FSU have evaded Florida’s Public Records Act and deprived the citizens of Florida of information of significant public concern.

2. FSU has been complicit in this scheme. FSU knows its obligations under Florida’s Constitution and Public Records Act and that it cannot participate in any action that would evade the Act. Nonetheless, FSU through its counsel received a public record from the NCAA pursuant to a devised plan making it artificially impossible to provide access to the public. Despite stating that it requested the NCAA to release the document, FSU has made no

formal demand that the public record be provided in a publicly accessible format as required by Chapter 119.

3. The scheme developed by the NCAA, and aided by FSU and its counsel, is particularly insidious to Florida's constitutional and statutory guarantee of access to public records. If allowed to stand, the Defendants' actions could be a roadmap for others to eviscerate Article I, Section 24 of the Florida Constitution and Florida's Public Records Act. Any time government and a private entity wanted to keep their dealings secret, the private entity and the agency would agree to sign a web restricted "custodial confidentiality agreement" to block public access. To be sure, Florida law does not tolerate such evasive actions, which are abhorrent to the Constitutional and statutory right of access.

4. In this action, Plaintiffs seek an order compelling the Defendants to provide the requested public records and awarding Plaintiffs their attorneys' fees and costs. Additionally, Plaintiffs request that this matter be expedited pursuant to Section 119.11, Florida Statutes (2008).

#### Jurisdiction and Venue

5. This Court has subject matter jurisdiction pursuant to Article V, Section 5(b) of the Florida Constitution and Section 119.11, Florida Statutes.

6. This Court has personal jurisdiction over the Defendant FSU because it is a State agency. This Court has personal jurisdiction over Defendant Wetherell because he is a Florida resident and State public official. This Court has personal jurisdiction over Defendant NCAA because it is doing business in Florida, has a significant number of members who are located in Florida and is otherwise engaged in substantial activity within the State, and the constitutional

and statutory violations it committed, which are the subject of this lawsuit, occurred in Florida. This Court has personal jurisdiction over GrayRobinson because it is a Florida corporation.

7. Venue is appropriate in Leon County because one or more of the Defendants reside here.

#### The Parties

8. Plaintiff The Associated Press is the essential global news network, delivering fast, unbiased news from every corner of the world to all media platforms and formats. Founded in 1846, AP today is the largest and most trusted source of independent news and information. On any given day, more than half the world's population sees news from AP. Reporters from AP routinely rely upon public records as principal sources for newsgathering, including records of FSU.

9. Plaintiff Cape Publications, Inc. operates *FLORIDA TODAY*, a daily newspaper of general circulation in Brevard County and surrounding areas. Reporters from *FLORIDA TODAY* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

10. Plaintiff Collier County Publishing LLC operates *Naples Daily News*, a daily newspaper of general circulation in Collier County and surrounding areas. Reporters from the *Naples Daily News* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

11. Plaintiff First Amendment Foundation is a nonprofit foundation dedicated to safeguarding the free flow of information to all people in Florida. It was formed for the purpose

of helping preserve and advance freedom of speech and access to government information as provided in the United States Constitution and the Florida Constitution.

12. Plaintiff Florida Press Association is a private, non-profit, nonpartisan membership organization comprised of Florida daily and weekly newspapers. The Florida Press Association represents the interests of its members in the courts of Florida in cases addressing issues of access to government information.

13. Plaintiff Lakeland Ledger Publishing Corporation operates *The Ledger*; a daily newspaper of general circulation in Polk County and surrounding areas. Reporters from *The Ledger* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

14. Plaintiff Media General Operations, Inc. operates WFLA-TV, an NBC affiliate television station that broadcasts daily newscasts and other programming to Hillsborough County and surrounding areas; tbo.com, a news and information website; and *The Tampa Tribune*, a daily newspaper of general circulation in Hillsborough County and surrounding areas. Reporters from WFLA, tbo.com and *The Tampa Tribune* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

15. Plaintiff Miami Herald Publishing Company operates *The Miami Herald*, a daily newspaper of general circulation in Miami-Dade County and South Florida. Reporters from *The Miami Herald* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

16. Plaintiff Morris Publishing Group LLC operates *The Florida Times-Union*, a daily newspaper of general circulation in Jacksonville and surrounding areas. Reporters from

*The Florida Times-Union* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

17. Plaintiff News-Journal Corporation operates the *Daytona Beach News-Journal*, a daily newspaper of general circulation in Volusia County and surrounding areas. Reporters from the *Daytona Beach News-Journal* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

18. Plaintiff NYT Management Services, Inc. operates *The Gainesville Sun*, a daily newspaper of general circulation in Alachua County and surrounding areas and *Sarasota Herald-Tribune*, a daily newspaper of general circulation in Sarasota County and surrounding areas. Reporters from *The Gainesville Sun* and *Sarasota Herald-Tribune* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

19. Plaintiff Orlando Sentinel Communications Company operates the *Orlando Sentinel*, a daily newspaper of general circulation in Orange County and surrounding areas. Reporters from the *Orlando Sentinel* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

20. Plaintiffs *Pensacola News Journal*, *The News-Press* and WTLV are divisions of Multimedia Holdings Corporation. The *Pensacola News Journal* is a daily newspaper of general circulation in Pensacola and surrounding areas. *The News-Press* is a daily newspaper of general circulation in Ft. Myers and surrounding areas. WTLV is an NBC affiliate television station that broadcasts daily newscasts and other programming to Jacksonville and surrounding areas. Reporters from these newspapers and station routinely rely upon public records as principal sources for newsgathering, including records of FSU.

21. Plaintiff Scripps Howard Broadcasting Company operates WPTV-TV, an NBC affiliate television station that broadcasts daily newscasts and other programming to Palm Beach County and surrounding areas. Reporters from WPTV routinely rely upon public records as principal sources for newsgathering, including records of FSU.

22. Plaintiff Scripps Treasure Coast Publishing LLC operates daily newspapers of general circulation along the central west coast of Florida, including *Stuart News*, *Vero Beach Press Journal* and *Ft. Pierce Tribune*. Reporters from these newspapers routinely rely upon public records as principal sources for newsgathering, including records of FSU.

23. Plaintiff Sun-Sentinel, Inc. operates the *South Florida Sun-Sentinel*, a daily newspaper of general circulation in Broward County and South Florida. Reporters from the *South Florida Sun-Sentinel* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

24. Plaintiff Tampa Bay Television, Inc. operates WFTS-TV, an ABC affiliate television station that broadcasts daily newscasts and other programming to Hillsborough County and surrounding areas. Reporters from WFTS routinely rely upon public records as principal sources for newsgathering, including records of FSU.

25. Plaintiff *Tallahassee Democrat*, a division of Federated Publications, Inc., is a daily newspaper of general circulation in Tallahassee and surrounding areas. Reporters from the *Tallahassee Democrat* routinely rely upon public records as principal sources for newsgathering, including records of FSU.

26. Plaintiff WJXX, a division of Gannett River States Publishing Corporation, is an ABC affiliate television station that broadcasts daily newscasts and other programming to

Jacksonville and surrounding areas. Reporters from WJXX routinely rely upon public records as principal sources for newsgathering, including records of FSU.

27. Plaintiff WTSP, a division of Pacific and Southern Company, Inc., a CBS affiliate television station that broadcasts daily newscasts and other programming to Tampa/St. Petersburg and surrounding areas. Reporters from WTSP routinely rely upon public records as principal sources for newsgathering, including records of FSU.

28. The Florida State University is a publicly funded Florida state university. State universities are agencies of the state that belong to and are part of the executive branch of state government. See § 1001.705(1)(a)4, Fla. Stat. (2008).

29. Pursuant to Section 1001.71, Florida Statutes, each local constituent university is administered by a university board of trustees. The Florida State University Board of Trustees is responsible “for compliance with state and federal laws, rules, regulations, and requirements.” § 1001.74(7), Fla. Stat.

30. Defendant Florida State University Board of Trustees is a “public body, officer, or employee of the state, or persons acting on their behalf” pursuant to Article I, § 24 of the Florida Constitution. See also § 119.011(2), Fla. Stat.

31. Defendant T.K. Wetherell is President of Florida State University and, in that capacity, is a custodian of records at Florida State University. See § 119.011(5), Fla. Stat.

32. FSU has a duty to permit the inspection, examination, and copying of its public records by any person desiring to do so, at a reasonable time, under reasonable conditions, and for reasonable costs. See § 119.07, Fla. Stat.; Art. I, § 24, Fla. Const. FSU may not, as here, receive public records in a manner purposefully designed to make it artificially impossible to

provide public access as a subterfuge to avoid Florida's constitutional and statutory right of access.

33. Defendant National Collegiate Athletic Association ("NCAA") is an unincorporated association whose members include colleges and universities from around the country, including Florida State University. One of the roles the NCAA plays in intercollegiate athletics is the enforcement of the rules and regulations adopted by the NCAA and its members.

34. Upon information and belief FSU pays dues or membership fees to the NCAA with public funds.

35. The NCAA has purposefully retained custody of its response to FSU's appeal of potential sanctions related to an academic cheating scandal, which was transmitted to FSU in connection with official business of the University and, therefore, has assumed custody of this public record. The public record was transmitted to FSU by means of a secure website and could only be reviewed in a read only format that prevented saving, copying, downloading, printing, or any other mechanism to make the record publicly available. The NCAA intends on continuing to transmit public records to FSU in this manner.

36. The NCAA is the custodian of the FSU public records within its possession and an agency pursuant to Article I, Section 24 of the Florida Constitution and Section 119.011(2), Florida Statutes. As the custodian of FSU's public records, the NCAA has a duty to permit the inspection, examination, and copying of such records by any person desiring to do so, at a reasonable time, under reasonable conditions, and for reasonable costs. See § 119.07, Fla. Stat.

37. Defendant GrayRobinson, P.A. is a Florida Corporation and law firm with offices throughout Florida. GrayRobinson has acted as counsel to FSU in its appeal of NCAA sanctions related to the academic cheating scandal at the University.

38. GrayRobinson has been delegated the responsibility of receiving the NCAA response on behalf of FSU. FSU directed GrayRobinson to access the response on the NCAA secure website and enter into an unlawful confidentiality agreement preventing disclosure of the public record. GrayRobinson received the public record on behalf of FSU and communicated its contents to FSU officials. As such, GrayRobinson is the custodian of the FSU public records within its possession or control and an agency pursuant to Article I, Section 24 of the Florida Constitution and Section 119.011(2), Florida Statutes.

39. As the custodian of FSU's public records, GrayRobinson has a duty to permit the inspection, examination, and copying of such records by any person desiring to do so, at a reasonable time, under reasonable conditions, and for reasonable costs. See § 119.07, Fla. Stat.

40. All conditions precedent to this action have occurred or have been excused or waived.

### Factual Background

#### *FSU's Academic Cheating Scandal*

41. In the Spring of 2007, FSU was impacted by an academic cheating scandal that permeated its athletic department.

42. FSU subsequently began an internal investigation of possible violations of NCAA legislation and potential academic irregularities involving student-athletes in several sports. See Exhibit A (Report to the National Collegiate Athletics Association From Florida State University, Feb. 14, 2008).

43. FSU concluded its investigation and issued a report to the NCAA on February 14, 2008. Id. The report found that sixty-one (61) student athletes had been given improper assistance on exams for an online course. Id.

44. As a result of this internal investigation, FSU initiated six self-imposed punitive actions, including placement of its athletic department on two years probation and reduction of scholarships in multiple sports. Id.

45. The NCAA conducted its own investigation and found that the allegations regarding the academic cheating scandal were of sufficient substance and reliability to warrant a formal notice of allegations, which was issued on June 10, 2008. See Exhibit B (Notice of Allegations to FSU, June 10, 2008).

46. FSU issued its formal written response to the NCAA's notice of allegations on September 12, 2008. See Exhibit C (FSU's Response to NCAA Notice of Allegations, Sept. 10, 2008). FSU acknowledged that it violated an NCAA bylaw concerning the "failure to monitor," but disagreed with some of the NCAA's findings.

47. On March 6, 2009, the NCAA released its "Public Infractions Report" concerning the academic cheating scandal. See Exhibit D (Florida State University Public Infractions Report, March 6, 2009). The report found that FSU committed "major violations" and imposed harsher penalties than FSU's previously self-imposed punitive actions. Id. The proposed penalties included stripping coach Bobby Bowden and the FSU football program of as many as fourteen (14) wins, four years of probation and the reduction of scholarships. Id. Nine other athletic programs were also penalized, including the loss of wins. Id.

48. FSU appealed the sanctions on April 23, 2009. See Exhibit E (FSU Appeal from Infractions Report, April 23, 2009). The appeal argued the penalty that required forfeiting wins in football and nine other sports was too harsh. Id.

49. On June 2, 2009, the NCAA responded to FSU's appeal (hereinafter referred to as "the Response"). See Exhibit F (June 2 letter from Noel M. Ragsdale, Chair, NCAA Division I Infractions Appeals Committee). However, this document has been kept secret and hidden from public view by the Defendants.

*Evasion of Florida's Public Records Act*

50. The NCAA's Response was posted to a "secure NCAA custodial website." See Exhibit G (FSU June 2, 2009 press release); Exhibit H ("FSU Hears Back From NCAA: No Documents Released," *Tallahassee Democrat*, June 2, 2009). This website does not allow for the Response to be saved, downloaded or printed, and FSU was not sent a paper copy of the Response. Id.

51. Importantly, upon information and belief, the NCAA had not previously used this mechanism to transmit documents to FSU. Prior NCAA records that have been transmitted to FSU have become public records accessible to the public. See Exhibits B, D (NCAA documents related to the cheating scandal). However, the NCAA has indicated that it plans to use this mechanism to transmit additional public records to FSU, and other public universities, including other Florida public institutions.

52. FSU directed GrayRobinson to enter into a "Web Custodial Confidentiality Agreement" and access the NCAA Response. See composite Exhibit I (confidentiality

agreements). The confidentiality agreement prevents the disclosure of the public record and contains harsh sanctions for its violations, including reporting the violation to The Florida Bar.

53. FSU authorized GrayRobinson to accept this unlawful confidentiality agreement, read the public record, and relay its contents to FSU officials. Id.; Exhibit J (“NCAA Denies Request to Release the Response of FSU’s Appeal,” *Tallahassee Democrat*, June 3, 2009). FSU accessed and received the Response through GrayRobinson, and it is, therefore, a public record as defined in Section 119.011(12), Florida Statutes and is encompassed by Article I, Section 24 of the Florida Constitution.<sup>1</sup>

54. Because of the mechanism established by the NCAA and utilized by FSU to access the Response, FSU now claims it is unable to provide public access to the Response. Id. Neither FSU nor GrayRobinson shared remote electronic access information with any of the Plaintiffs and also denied requests simply to review the Response on a GrayRobinson computer screen.

55. The “secure NCAA custodial website” was created for the express purpose of avoiding the disclosure requirements of Florida’s Public Records Act. See Exhibit K (Andrew Carter, “Why the Secrecy, NCAA?,” *Orlando Sentinel*, June 3, 2009).

56. Thus, the NCAA has insisted on retaining custody of the Response so that the document may remain confidential and intentionally devised a plan that allowed FSU’s counsel

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<sup>1</sup> The definition of a public record is broad and includes “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, *regardless of the physical form, characteristics, or means of transmission*, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” § 119.011(12), Fla. Stat. The NCAA response fits squarely within this definition.

to receive the Response but not provide public access to the document. FSU permitted its counsel to sign a confidentiality agreement apparently attempting to bind FSU to secrecy, in contravention of Florida law.

57. By its own actions, the NCAA has assumed and maintained custody of the Response, which is a public record of FSU. FSU has admitted that the NCAA has become a custodian of the record. FSU's counsel explains, "The NCAA has retained custody and control of this document on its secure system." See Exhibit L (June 5, 2009 letter from Linda C. Schmidt, Associate General Counsel, FSU).

58. Although FSU claims that it has asked the NCAA to release the Response, it has no record of making a demand to the NCAA that the record be made public or provided to FSU in a manner that allows for public access. To the contrary, its counsel, GrayRobinson, signed a confidentiality agreement pledging it would not disseminate the public record.

59. The Attorney General's Office has opined that the NCAA Response is a public record and the method utilized to transmit and receive the Response – and thus deny the public access to the document – violates Florida's Public Records Act. See Exhibit M (Bob Ferrante, "Blocking the Sunshine? NCAA Draws Ire of State," *The Ledger*, June 11, 2009).

#### *Public Records Requests*

60. Pursuant to Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, Plaintiffs made various written and verbal public records requests to FSU and the NCAA. See composite Exhibit N (written public records requests)

61. Specifically, Plaintiffs requested the following documents:

- NCAA Division I Committee on Infractions' response to FSU's appeal penalties recommended in the academic misconduct case, which was submitted on or about June 2, 2009;
- Any notes, communications or other documents related to the NCAA Response;
- Any correspondence or communications between the NCAA and FSU regarding Florida's Public Records Act;
- Any correspondence or communications between the NCAA and FSU regarding public requests for the NCAA's Response; and
- Any demand FSU has made to the NCAA for a copy of the NCAA response.

Id. The public records request also stated: "To the extent that FSU did not retain a copy of the NCAA response, we request that you obtain the response immediately or provide some other mechanism for public access to the NCAA response record." See Times Publ'g Co. v. City of St. Petersburg, 558 So. 2d 487 (Fla. 2d DCA 1990)." Id.

62. The NCAA has failed to respond to the Plaintiffs' requests.

63. FSU responded to the public records requests stating that the NCAA retained custody and control of the Response and that the University was unable to provide access to the document. See composite Exhibit O (FSU responses to public records requests). Specifically, without acknowledging that it was complicit in the process designed to evade Florida's public disclosure requirements, FSU asserted:

The NCAA has retained custody and control of this document on its secure system. The University is unable to gain access to this document. Mr. Bill Williams, counsel who is representing the University in this appeal, is able to view the document only by signing a confidentiality agreement, and his viewing on the secure NCAA site is limited to "read only," with no ability to print the document.

Id.

64. FSU further responded that it had asked the NCAA to make the Response public, but it declined to do so. Id. Despite this assertion, FSU could not produce any demand that it had made to the NCAA for a copy of the Response.

65. Additionally, upon signing the confidentiality agreements, the NCAA transmitted to GrayRobinson instructions for accessing the Response on behalf of FSU. However, FSU did not provide any such document in response to Plaintiffs' public records requests, nor did the University claim that it was withholding the instructions record and cite a statutory basis to justify non-disclosure.

Count I  
Unlawful Withholding of Public Records  
*(NCAA June 2 Response)*

66. Plaintiffs incorporate the allegations contained in paragraphs 1 through 65.

67. The June 2 NCAA Response to FSU's appeal is a public record as defined in Section 119.011(12), Florida Statutes and encompassed within Article I, Section 24 of the Florida Constitution.

68. Moreover, because public funds were expended on NCAA dues or membership fees, all of FSU's membership records, including the June 2 NCAA Response, are public records and subject to Chapter 119. See § 119.01(3), Fla. Stat.

69. There is no exemption that would prevent inspection or copying of the NCAA response. None has been cited.

70. The right of access to public records applies to "any public body, officer, or employee of the state, or persons acting on their behalf . . ." Art. I, § 24, Fla. Const.; see also § 119.011(2), Fla. Stat.

71. Defendant FSU, as a “public body” under Article I, Section 24 of the Florida Constitution and an “agency” under Section 119.011(2), Florida Statutes, has an obligation to provide access to any non-exempt public records upon request.

72. Defendant Wetherell as an officer of the State under Article I, Section 24 of the Florida Constitution and Section 119.011(2), Florida Statutes, has an obligation to provide access to any non-exempt public records upon request.

73. By its own actions, and as admitted by FSU, the NCAA has assumed custody of FSU’s public records and is acting on behalf of FSU as the custodian of the public records at issue. Therefore, the NCAA is an “agency” under Article I, Section 24 of the Florida Constitution and Section 119.011(2), Florida Statutes, and has an obligation to provide access to any non-exempt public records for which it has assumed the role of custodian.

74. Additionally, FSU delegated to GrayRobinson the duty to receive the NCAA response on its behalf and GrayRobinson received and accessed the NCAA response on behalf of FSU. GrayRobinson then communicated the contents of the response to FSU officials. Therefore, GrayRobinson is an “agency” under Article I, Section 24 of the Florida Constitution and Section 119.011(2), Florida Statutes, and has an obligation to provide access to any non-exempt public records for which it has assumed the role of custodian.

75. FSU cannot avoid its duties under the Florida Constitution and Public Records Act by participating in a devised plan to evade Florida law and receiving a document in a manner that prevents public access. Nor can FSU, either itself or through its agents, enter into a confidentiality agreement that prevents the disclosure of public records.

76. Similarly, the NCAA cannot evade Florida's Public Records Act and avoid the custodial responsibilities it assumed by devising a mechanism that keeps public records from actually being placed in the hands of the government agency.

77. Defendants have failed or refused to supply Plaintiffs with the June 2 NCAA Response that Plaintiffs have requested.

78. The intentional plan devised by the Defendants to transmit the NCAA Response, and future public records, in a manner making it artificially impossible to provide public access and thus evade Florida's public records laws violates Chapter 119, Florida Statutes and Article I, Section 24 of the Florida Constitution and is unlawful.

79. The confidentiality agreements agreed to by the Defendants, which prohibit the disclosure of the NCAA Response, violate Chapter 119, Florida Statutes and Article I, Section 24 of the Florida Constitution and are unlawful and unenforceable.

80. The Defendants' failure to provide the NCAA Response violates Chapter 119, Florida Statutes, and Article I, Section 24(a) of the Florida Constitution and is unlawful.

81. The Defendants failure to provide access to FSU's NCAA membership records further violates Section 119.01(3), Florida Statutes and is unlawful.

Count II  
Illegal Possession of Public Records  
*(NCAA June 2 Response)*

82. Plaintiffs incorporate the allegations contained in paragraphs 1 through 65.

83. The NCAA and FSU devised an unlawful secrecy scheme designed to frustrate the operation of Article I, Section 24 of the Florida Constitution and Chapter 119, Florida

Statutes. FSU and GrayRobinson agreed to the NCAA's secrecy scheme and in a manner that prevented public access to a public record.

84. FSU has an official duty to demand that the public record or a copy thereof be delivered to FSU. §119.021(4)(b), Fla. Stat. The NCAA must provide the record within ten days of the demand. Id.

85. The continued retention of FSU's public records by the NCAA in a manner that prevents public access violates Chapter 119, Florida Statutes, and Article I, Section 24(a) of the Florida Constitution and is unlawful.

86. The NCAA has illegally retained possession of FSU's public records in violation Section 119.021(4)(b), Florida Statutes.

### Count III

#### Unlawful Withholding of Public Records

#### *(Records Related to the NCAA Response and Correspondence Regarding Florida's Public Records Act)*

87. Plaintiffs incorporate the allegations contained in paragraphs 1 through 65.

88. In addition to the June 2 NCAA Response, Plaintiffs also requested the following documents from FSU:

- Any notes, communications or other documents related to the NCAA response;
- Any correspondence or communications between the NCAA and FSU regarding Florida's Public Records Act;

89. After signing confidentiality agreements, the NCAA transmitted to GrayRobinson log in instructions so that it could access the June 2 Response on behalf of FSU. And, in fact, GrayRobinson accessed the response on the NCAA's secure custodial website on behalf of FSU using these instructions and communicated the contents of the Response to FSU officials.

90. Upon information and belief, FSU may have also entered into a confidentiality agreement with the NCAA.

91. The log-in instructions and any confidentiality agreement between FSU and the NCAA are public record as defined in Section 119.011(12), Florida Statutes and Article I, Section 24 of the Florida Constitution and are responsive to Plaintiffs' public records requests.

92. FSU cannot contract to a third party its obligations under Article I, Section 24 of the Florida Constitution, nor can it avoid its constitutional and statutory disclosure requirements by allowing a third party to receive and retain its records.

93. FSU has not provided these records and has failed to disclose that it is withholding these records or provide a statutory basis for non-disclosure.

94. FSU has not provided a good faith response to Plaintiffs' public records requests in violation of Section 119.07(1)(c), which is unlawful.

95. The failure to provide the requested records is a violation of Sections 119.01(1) and 119.07(1)(a) and Article I, Section 24 of the Florida Constitution and is unlawful.

#### Attorneys' Fees

96. Florida's Public Records Act provides that "[i]f a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees." See §119.12, Fla. Stat.

97. Plaintiffs have retained the undersigned counsel in this matter.

### Expedited Hearing

98. Section 119.11, Florida Statutes, provides that courts are to set immediate hearings in actions to enforce the provisions of the Public Records Act and are to give such cases priority over other pending cases. Salvador v. Fennelly, 593 So. 2d 1091, 1094 (Fla. 4th DCA 1992) (recognizing the importance of the statutory provision for immediate hearings in Public Records Act cases because “time can be an important element in the right of access to public records”).

99. As the Florida Supreme Court has recognized: “News delayed is news denied.” State ex. Rel. Miami Herald Publ’g Co. v. McIntosh, 340 So. 2d 904, 910 (Fla. 1976). Therefore, Plaintiffs request an immediate hearing and that this case be given priority over other pending cases.

### Relief Requested

WHEREFORE, Plaintiffs request that this Court:

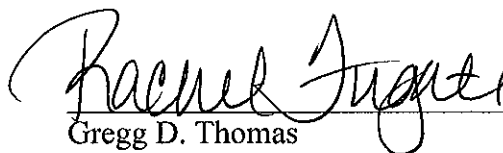
- (a) Set an immediate hearing pursuant to Section 119.11, Florida Statutes;
- (b) Conduct an *in camera* inspection of the requested records;
- (c) Find that the mechanism utilized by the Defendants to transmit documents to a public university, but prevent public access to such documents violates Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, and is unlawful;
- (d) Find that the confidentiality agreements agreed to by the Defendants, which prohibit the disclosure of public records, violate Article I, Section 24 of the Florida Constitution and Chapter 119, Florida Statutes, and are unlawful and unenforceable;

- (e) Order the Defendants immediately to provide the requested public records to the Plaintiffs;
- (f) Award Plaintiffs their reasonable attorneys' fees, costs, and expenses incurred in this action, as provided in Section 119.12, Florida Statutes; and
- (g) Grant Plaintiffs such further relief as the Court deems proper.

Dated June 15, 2009.

Respectfully submitted,

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